

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

3       UNITED STATES OF AMERICA,           )  
4    )  
4                   Plaintiff,               )     Judge Wells  
5    )     Cleveland, Ohio  
5               vs.                            )  
6    )     Criminal Action  
6       JAMES A. TRAFICANT, JR.,           )     Number 4:01CR207  
7    )  
7                   Defendant.               )

8   - - - - -  
9                   TRANSCRIPT OF PROCEEDINGS HAD BEFORE  
10   THE HONORABLE LESLEY WELLS  
11   JUDGE OF SAID COURT,  
12   ON WEDNESDAY, MARCH 20, 2002  
13   Jury Trial  
14   Volume 22  
15   - - - - -

16  
17       APPEARANCES:  
17       For the Government:               CRAIG S. MORFORD,  
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18   MATTHEW KALL,  
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22       Official Court Reporter:       Shirle M. Perkins, RDR, CRR  
23   U.S. District Court - Room 539  
24   201 Superior Avenue  
24   Cleveland, Ohio 44114-1201  
25   (216) 241-5622  
25       Proceedings recorded by mechanical stenography; transcript  
      produced by computer-aided transcription.

## Cafaro - Cross Continued

1 Wednesday Session, March 20, 2002, at 9:00 A.M.

2 THE COURT: Good morning.

3 THE JURY: Good morning.

4 THE COURT: Sir, you're still under oath.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Congressman.

7 CROSS-EXAMINATION OF JOHN J. CAFARO CONTINUED

8 BY MR. TRAFICANT:

9 Q. Good morning, J.J..

10 A. Good morning, Congressman.

11 Q. Did you stay overnight or go back to the district?

12 A. I've been staying in Cleveland.

13 Q. I have a couple questions I'd like to ask of you.

14 And can you tell the jury how much money you've paid for  
15 Mr. Lange's defense?

16 A. I have no idea, Mr. Congressman.

17 Q. Do you know who paid the money for Mr. Lange's  
18 Defense?

19 A. I will be paying for Mr. Lange's defense.

20 Q. Pardon?

21 A. It will come out of my account ultimately.

22 Q. Have you been billed at all yet?

23 A. Again, that's being handled by my accounting  
24 department.

25 Q. Who authorized the payment?

## Cafaro - Cross Continued

- 1 A. The authorization will come from my personal counsel.
- 2 Q. Do you have the same counsel as Mr. Lange?
- 3 A. No, I do not.
- 4 Q. Are they affiliated in any way?
- 5 A. No, they are not.
- 6 Q. When did you make the first payment for any of his
- 7 fees?
- 8 A. Mr. Congressman, I said I don't know. It's being
- 9 handled by the accounting department.
- 10 Q. On your personal account?
- 11 A. It will ultimately be charged to my personal account.
- 12 Q. Will it be paid -- you said ultimately -- initially
- 13 paid from the Cafaro Company account?
- 14 A. Congressman, I don't know. I have not been kept in
- 15 the loop on that issue. I've not been asked to write my
- 16 personal check, and I don't know what they have done with
- 17 it up to this point.
- 18 Q. Have you had meetings about paying Mr. Lange's
- 19 attorney?
- 20 A. We have not.
- 21 Q. Did you inform the Prosecution that Mr. Lange's
- 22 attorney was being paid by you?
- 23 A. I did not.
- 24 Q. Do you have any knowledge that, in fact, the
- 25 Prosecution had come to learn through any of your people

Cafaro - Cross Continued

1       that you are, in fact, paying for Mr. Lange's bill?

2       A.     I have not -- I have no direct knowledge of the  
3       conversations my counsel has had with the Prosecution in  
4       that regard.

5       Q.     Well, let me ask you this:  When you -- when your  
6       attorney met with the Prosecution to, in fact, discuss your  
7       plea agreement, were you present?

8       A.     I was present when I discussed the plea agreement  
9       with the Prosecution.

10      Q.     Your attorney was not present?

11      A.     My attorney was present also, yes.

12      Q.     And who else was present at that meeting?

13      A.     Well, I had -- I believe three of my attorneys there.  
14      Mr. --

15      Q.     Who?

16      A.     Three of my attorneys were there.

17      Q.     Who are they?

18      A.     Mr. Mearns, Megan Frient, and Mark Beck.

19      Q.     Mearns, Beck and who?

20      A.     Frient.

21      Q.     And is that the name of their law firm?

22      A.     No.  They're with Baker and Hostetler.

23      Q.     And where are they located, their home office?

24      A.     I don't know where their home office is.  We're  
25      dealing in this particular issue with the Cleveland office.

## Cafaro - Cross Continued

- 1 Q. They're all in the Cleveland office?
- 2 A. Well, two that belong to that law firm are.
- 3 Q. Who, which two?
- 4 A. Mr. Mearns and Ms. Frient.
- 5 Q. Ms. Frient?
- 6 A. Megan Frient.
- 7 Q. Where is Mr. Beck from?
- 8 A. Mr. Beck is my personal attorney.
- 9 Q. And where is he from?
- 10 A. He resides, I believe, in the Mahoning Valley. He
- 11 works at the Cafaro Company.
- 12 Q. Who was present at that plea agreement for the
- 13 Government?
- 14 A. I didn't pay much attention. All the conversations
- 15 were with Mr. Morford, but I think there were some other
- 16 people in the room at the time.
- 17 Q. Do you remember any of their names?
- 18 A. No.
- 19 Q. Are any of them seated at the table? Would the
- 20 gentlemen please look at the witness?
- 21 A. Again, I don't know which people were at that
- 22 particular meeting.
- 23 Q. Well, in addition to Mr. Morford, how many others
- 24 were there approximately?
- 25 A. Congressman, I told you I don't know. I was focused

## Cafaro - Cross Continued

1 on Mr. Morford. I was focused on the gravity and the  
2 substance of the agreement, and I don't remember how many  
3 others representing the Government were there or which ones  
4 they were.

5 Q. But there were more than Mr. Morford, is that your  
6 testimony?

7 A. That's my testimony.

8 Q. Do you know if they were IRS or FBI agents?

9 A. Congressman, I don't know who they were. I do know  
10 there were more than Mr. Morford. I know that there was  
11 always a representative of another branch of Government  
12 when I was there with Mr. Morford, but if they were with  
13 the IRS or the FBI, I do not know.

14 Q. So there were always other branches present when they  
15 interviewed you and you were present, is that it?

16 A. It was always someone else there, that's correct.

17 Q. From another branch of the Government, be it IRS or  
18 FBI?

19 A. That's correct.

20 Q. Did you pay any legal fees for Richard Detore?

21 A. No, I have not.

22 Q. Did you have any agreement in writing with Mr. Lange  
23 relative to paying these legal fees?

24 A. Not that I'm aware, no.

25 Q. Did you ask Mr. Lange to help him out, or did he ask

## Cafaro - Cross Continued

1       you to help him out?

2       A.       When this matter came down, Mr. Lange was still an  
3       employee of U.S. Aerospace. I thought it was important  
4       that he have good representation, and the offer was made  
5       through my attorney to assist in his legal fees.

6       Q.       So Mr. Beck arranged for his attorney?

7       A.       Either Mr. Beck or Mr. Mearns --

8       Q.       Mr. Mearns?

9       A.       Yes, was involved in making sure that he knew that we  
10      would underwrite and pay for good, competent legal advice.

11      Q.       And you say we --

12      A.       But they did not choose his attorney.

13      Q.       When you say we, who are you referring to?

14      A.       Actually, I was -- I was the empirical "we,"  
15      Congressman. I apologize. It was -- I was going to pay.

16      Q.       So that was just like a little slip and --

17      A.       Yeah, that was a little slip. I was referring to  
18      several people involved in the process, and it came out a  
19      "we" as opposed to an "I," and I apologize.

20      Q.       Now, after Al Lange was no longer an employee of the  
21      Government, did you stop paying for his legal fees?

22      A.       No. I will pay all of his legal fees for this  
23      lawsuit process.

24      Q.       You have any written agreement for that?

25      A.       Congressman, I do not know. Again, it was handled by

Cafaro - Cross Continued

1       very competent counsel, and we've left it in -- I've left  
2       it in their hands, and I'm sure that whatever is necessary,  
3       they have done.

4       Q.     Did your attorney at any of these meetings inform the  
5       Government of who was paying for Mr. Lange's legal defense?

6       A.     As I told you previously, Congressman, not in my  
7       presence that I can recall. I'm sure that at some point in  
8       time it was conveyed to the Government either by Mr. Lange  
9       or by my attorneys. I do not know. That was not a subject  
10      of discussion when I was in the room for the proffers, and  
11      we were there on more immediate issues.

12      Q.     Well, Mr. Cafaro, an employer pays for a former  
13      employee, who, in fact, has called you a liar. You're  
14      trying to tell me that the Government did not know you  
15      were -- that you were paying his legal defense?

16      A.     I didn't say that, counsel.

17                   MR. MORFORD: Objection to the relevance of  
18      this line of questioning. Your Honor, we brought this out,  
19      and we gave it to the Congressman. It's irrelevant.

20                   THE COURT: Congressman, we've been over  
21      this.

22                   MR. TRAFICANT: I object to his objection.

23                   THE COURT: Okay.

24      BY MR. TRAFICANT:

25      Q.     You tell the FBI that the legal fees were being paid



Cafaro - Cross Continued

1 for by --

2 MR. MORFORD: Objection. Irrelevant and  
3 asked and answered.

4 MR. TRAFICANT: I never asked that.

5 THE COURT: How many more questions do you  
6 think you have in this area?

7 MR. TRAFICANT: I have some questions here,  
8 and I'd like to get to it. I think it's a legal matter  
9 that's very serious.

10 THE COURT: Okay. We'll take it up the next  
11 break whether it's a relevant issue. Proceed.

12 BY MR. TRAFICANT:

13 Q. Did you discuss your testimony with Mr. Lange?

14 A. No, I have not, and no, I did not.

15 Q. How about with Mr. Lange's attorney?

16 A. Never met Mr. Lange's attorney until he was walking  
17 out of here his last day.

18 Q. How long has Mr. Lange been represented by this  
19 attorney?

20 A. Congressman, I don't know. I would assume -- I don't  
21 know.

22 Q. Did Mr. Lange's attorney ever give you any legal  
23 advice?

24 A. He has not. I never even met him or spoke to him.

25 Q. Were you ever sent a bill by this attorney?

## Cafaro - Cross Continued

1 A. Congressman, I don't know if he's been sent the bill.  
2 It's either been processed through Baker and Hostetler, or  
3 it's been processed through my accounting department. As I  
4 have told you before, I have not seen any bills. I've  
5 stayed out of the process completely, and that's all I can  
6 tell you about it.

7 Q. Was there a limit or a cap put on any fees?

8 A. Congressman, I've told you, I have not been directly  
9 involved. I do not know what the arrangements are. The  
10 only thing I know is that ultimately, when the day is done,  
11 I will personally be paying for Mr. Lange's legal fees.  
12 That's all I can tell you.

13 The process of how the bills are going to be  
14 processed, get paid, who they're billing, when it gets  
15 billed, where it gets billed, how it gets billed, why it  
16 gets billed, I do not know.

17 Q. Was the agreement made in Ohio or in Virginia?

18 A. Congressman, the agreement was made and was handled  
19 by my counsel. I don't know.

20 Q. Are you a very close friend with Mr. Lange?

21 A. Mr. Lange was a business associate.

22 Q. You consider him a friend?

23 A. I consider him a friend.

24 Q. Is Mr. Lange, in your opinion, a truthful person?

25 A. I believe that he is.

## Cafaro - Cross Continued

1 Q. Did you ever discuss truthfulness between the two of  
2 you?

3 A. Not that I can recall.

4 Q. During presidential administrations, did you not have  
5 their private phone numbers?

6 A. Pardon me?

7 Q. Did you have the private phone numbers?

8 A. Of Mr. Lange?

9 Q. Of the presidents of the United States?

10 A. No. I have -- I usually have the White House phone  
11 number.

12 Q. Do you know an employee by the name of Loni  
13 Czekalski?

14 A. Yes, I do.

15 Q. And how long did she work with you?

16 A. Not a very long time.

17 Q. Roughly how long?

18 A. Congressman, I don't remember, but it was less than a  
19 year.

20 Q. You keep and maintain records?

21 A. Yes, we do.

22 Q. Do you know if she was a former FAA administration  
23 worker?

24 A. It was my understanding that she worked for the FAA,  
25 yes.

## Cafaro - Cross Continued

1 Q. You know how many years she worked for the FAA?

2 A. No, I do not.

3 Q. Did you interview her for the job?

4 A. Actually, Mr. Detore did when she was hired on his  
5 recommendation, but I had met her before she was hired.

6 Q. Did Ms. Czekalski ever say she would refer Traficant  
7 and Lange to other members of Congress?

8 MR. MORFORD: Objection, hearsay.

9 THE COURT: Sustained.

10 Q. Did you have knowledge of referrals made to other  
11 members of Congress made by me?

12 MR. MORFORD: Objection, unless he has  
13 knowledge outside the hearsay he just asked.

14 THE COURT: Sustained.

15 BY MR. TRAFICANT:

16 Q. Was a prototype for the trailer for MEANPALS ever  
17 built?

18 A. Yes.

19 Q. Where is it located?

20 A. Where is what located?

21 Q. The trailer that was built for MEANPALS.

22 A. I don't know.

23 Q. Did you ever see the trailer?

24 A. Yes.

25 Q. Were you ever told by Mrs. Czekalski there was a

Cafaro - Cross Continued

1 generator --

2 MR. MORFORD: Objection, hearsay.

3 THE COURT: Congressman, that will get into a  
4 hearsay issue.

5 Q. You have conversation with Ms. Czekalski?

6 A. Some.

7 Q. She discussed a welder and a generator with you?

8 MR. MORFORD: Objection.

9 THE COURT: Sustained, same reason.

10 Q. Was Ms. Czekalski a truthful and good employee?

11 A. I didn't know her well enough to characterize her in  
12 any way, but I would assume she was a fine person.

13 Q. Did you ever call Mr. Detore into Youngstown to meet  
14 with you and your brother and your sister relative to the  
15 ongoing loans regarding U.S. Aerospace Group?

16 A. I don't recall if he was ever called for exactly that  
17 purpose.

18 Q. What purpose was he called to Youngstown for?

19 A. Well, he was in Youngstown on a few occasions, and  
20 some of it, usually it was basically to report as to the  
21 status of various issues at U.S. Aerospace.

22 Q. Well, since you had to get approval from your  
23 brother, did you ever suggest that he bring in your chief  
24 operating officer to explain the need for those loans?

25 A. Congressman, I do not recall right now if Mr. Detore

Cafaro - Cross Continued

1 ever was in Youngstown and addressed that specific issue.

2 I don't recall one way or the other.

3 Q. Once the budget exceeded the expenses for the boat,  
4 did you yourself personally monitor those expenses?

5 A. No, I did not.

6 Q. When did you become aware that the boat expenses had,  
7 in fact, gone beyond the budget?

8 A. When I wrote the check that exceeded the \$20,000 they  
9 told me it was going to take.

10 Q. Is that what the survey said it was going to take?

11 A. I don't know what the survey said, Congressman. I  
12 never saw the survey.

13 Q. As a businessman, do you make bids?

14 A. Yes, I do, in the normal course of business.

15 Q. And in the normal course of business, when you're  
16 building a mall, do you let out bids?

17 A. Yes, Congressman, I do. But this boat was not the  
18 normal course of business.

19 Q. Did you know if there had been a bid survey on the  
20 boat?

21 A. I told you, Congressman, I never saw a survey.

22 Q. Then how do you know you exceeded the boat?

23 A. Rick told me it was going to cost \$20,000.

24 Q. Well, who got the survey?

25 A. Congressman, I couldn't tell you who got the survey.

Cafaro - Cross Continued

1 If I didn't know there was one.

2 Q. Well, if you are were going to go ahead and just do a  
3 favor, why did you need a survey?

4 A. Well, Congressman, I didn't know there was one.

5 Q. I didn't ask you that. I showed you the survey  
6 yesterday. Why did a survey -- was it needed or necessary  
7 since this was a scam?

8 A. As I've told you previously, I didn't know there was  
9 one. However, it looks like very good documentation to  
10 support what you and I were doing.

11 Q. Did you ever get a bill to pay the surveyor?

12 A. Congressman, I didn't know there was a survey. I do  
13 not recall ever paying a bill for the survey.

14 Q. Do your accountants itemize each item?

15 A. That -- all of the boat repairs were paid for out of  
16 my personal account with the exception of one check. So I  
17 would assume that if there was a boat survey bill to be  
18 paid, it would have been given to me and run through my  
19 personal account.

20 And I've seen nowhere in my personal account and  
21 nowhere I can remember in the corporate accounts where a  
22 survey was paid for. So I do not know that answer.

23 Q. Now, on the morning of January 14th, what was the  
24 color of the building that the meeting was held in?

25 MR. MORFORD: What date and what building,

Cafaro - Cross Continued

1 your Honor?

2 Q. January 14, 1998, when the Regional Development  
3 program was recommended, and you were invited, and you  
4 attended on November 14, 1998.

5 THE COURT: We have January 14 and November  
6 14th both in that sentence. Which one?

7 MR. TRAFICANT: November 14th, 1998.

8 A. Okay. Congressman, we'll try this one more time, and  
9 ask me this question again because I'm confused.

10 Q. What was the color of the building in which the  
11 Regional Development Authority was proposed by me in an  
12 open public meeting?

13 A. I have no idea. I've been staying in a hotel for the  
14 last four nights. I can't tell you the name of the color  
15 it is.

16 Q. How many sets of doors were there in that building to  
17 get in?

18 A. I don't know, Congressman.

19 Q. Was the meeting in a room?

20 A. Yes, a large room. There were a lot of people there.

21 Q. Was it a room or an open space?

22 A. Well, something that has four walls and a ceiling and  
23 a floor is a room to me. So it was a room. It was inside  
24 a building. It wasn't an open space outside.

25 Q. Well, you do not remember the color of the building?



## Cafaro - Cross Continued

- 1 A. I went to Youngstown State University, and I don't  
2 remember the color of the building.
- 3 Q. Do you know the color of your car?
- 4 A. The color of my car was green.
- 5 Q. What's the color of your current car?
- 6 A. The color of my current car is white.
- 7 Q. Did you and your brother, Anthony, fall out over U.S.  
8 Aerospace?
- 9 A. We have not.
- 10 Q. Is your brother familiar with the legal fees being  
11 paid for Al Lange?
- 12 A. I don't know what my brother's familiar with. He and  
13 I have not spoken about it.
- 14 Q. Did you ever meet an Mr. Ernst deGroot?
- 15 A. I don't think so. I mean, I -- I meet a lot of  
16 people, Congressman, so the name itself doesn't do anything  
17 for me. That's not saying I haven't. I just can't place  
18 that name.
- 19 Q. Did you ever send workers to my farm?
- 20 A. No, I did not.
- 21 Q. Were you ever on my boat?
- 22 A. No, I was not.
- 23 Q. Did you ever see my boat?
- 24 A. No, I have not.
- 25 Q. Have you seen Mr. Lange's boat?

## Cafaro - Cross Continued

1 A. No, I have not.

2 Q. When did you sell your boat?

3 MR. MORFORD: Your Honor, all these questions  
4 have been asked and answered, some of them two or three  
5 times.

6 THE COURT: He can answer this one.

7 A. You asked me yesterday. I said I don't remember when  
8 I sold my boat. I probably sold it some time in -- I don't  
9 remember when I sold my boat.

10 Q. Do you keep documents and receipts of your sales  
11 activities, Mr. Cafaro?

12 A. I'm sure that there is proper documentation in the  
13 office.

14 Q. To your knowledge, was your daughter's involvement  
15 with the U.S. Aerospace the subject of media inquiries?

16 A. I don't think I understand the question, Congressman.  
17 Could you rephrase it?

18 Q. Was your daughter's involvement in the United States  
19 U.S. Aerospace the subject of media inquiries?

20 A. Her involvement in the company -- I don't think I  
21 can -- I don't know.

22 Q. Is it a fair statement to say that your memory is not  
23 too good?

24 A. Congressman, my memory is just fine. You are picking  
25 minutiae out of life, and when you pick minutiae out of

## Cafaro - Cross Continued

1 life, you're going to get people sitting here saying they  
2 don't know, and if that is your intent, so be it, but my  
3 memory as to what you and I did, the subject of why I am  
4 here is perfectly clear. I gave you \$13,000 in cash.  
5 That's what my memory is good about, sir.

6 Q. I know you said that about five times.

7 Now, let me ask you this: You know everything about  
8 supposed cash, but you know nothing about U.S. Aerospace  
9 and any of its bills; is that correct?

10 A. That's not what I testified to.

11 Q. Did you not testify yesterday that you lied under  
12 oath?

13 A. Yes, I did.

14 Q. Was that a part of your charge in your information  
15 agreement with the Government?

16 A. I was not charged with that.

17 Q. As a businessman, is it a wrongful act to lie under  
18 oath?

19 A. Yes.

20 Q. Did your attorney ever discuss your lying under oath  
21 with the Prosecutors?

22 A. I don't know what my attorneys discussed with the  
23 prosecutors. I can tell you that when my proffer in this  
24 instance came up, the very first time this issue came up of  
25 the Chance issue, came up in my proffers regarding this

## Cafaro - Cross Continued

1 case, I was truthful with the Prosecution.

2 Q. Did the Prosecution at any time, through any of their  
3 agents, either IRS or FBI, threaten the Cafaro Company with  
4 five years of audits?

5 A. No one has ever threatened me, Congressman. Every  
6 conversation I have had with the members of the Government  
7 are represented in these 302s. I was represented by  
8 counsel at every meeting, and you can read for yourself. I  
9 was never threatened with anything by anyone.

10 Q. Do you know who writes the 302s?

11 A. I have no idea who writes the 302s.

12 Q. Did you write the 302s?

13 A. I did not write the 302s.

14 Q. Did anyone ever threaten to involve your daughter  
15 Capri in this investigation?

16 A. My daughter, Capri, was never threatened with  
17 involvement or Prosecution. As a matter of fact, my  
18 daughter was interviewed. She was given immunity from the  
19 very first time she spoke. And there was never a reason to  
20 implicate her beyond her being a witness ever.

21 Q. You mean the Prosecution made that statement to you?

22 A. I'm telling you that my daughter, Capri, had immunity  
23 from the very first time she said hello, and that immunity  
24 stayed through each of her proffers and through her Grand  
25 Jury testimony.

Hess - Direct/Smith

1 Q. So there was a proffer made to your daughter?

2 A. Not a proffer made to my daughter. When she would  
3 meet with the Justice Department, every time she met with  
4 them, she had immunity. So she was never in danger of  
5 having a problem whatsoever.

6 Q. How many times did she meet with the Government?

7 A. Congressman, I can't tell you. She met on her own,  
8 and I can't tell you how many times.

9 MR. TRAFICANT: No further questions at this  
10 time.

11 THE COURT: Thank you.

12 MR. MORFORD: No questions.

13 THE COURT: Thank you. You're excused.

14 MR. SMITH: The Government calls Bruce Hess.

15 THE COURT: Sir, would you raise your right  
16 hand.

17 BRUCE HESS

18 of lawful age, a witness called by the Government,

19 being first duly sworn, was examined

20 and testified as follows:

21 DIRECT EXAMINATION OF BRUCE HESS.

22 THE COURT: Speak loudly so we can all hear  
23 you.

24 BY MR. SMITH:

25 Q. Sir, would you please state your full name, and spell

Hess - Direct/Smith

- 1       your last name for the court reporter?
- 2       A.     Bruce Hess, H-E-S-S.
- 3       Q.     How are you employed?
- 4       A.     I'm employed with the IRS office of Chief Counsel.
- 5       Q.     Where?
- 6       A.     Philadelphia, Pennsylvania.
- 7       Q.     How long have you worked for the IRS?
- 8       A.     I worked for the IRS -- I've worked for the office of
- 9       Chief Counsel 30 years, and prior to that with the
- 10      Commissioner of Internal Revenue for three years.
- 11      Q.     So total of how many years?
- 12      A.     33 years.
- 13      Q.     And what is your present job title?
- 14      A.     Technical adviser to the area counsel criminal tax,
- 15      area 1.
- 16      Q.     Are you here, in part, to testify concerning summary
- 17      charts that you have prepared from evidence in this case?
- 18      A.     Yes.
- 19      Q.     Turning your attention to Exhibit 8-62(1) on the
- 20      counter before you, do you recognize that document?
- 21      A.     Could you repeat that exhibit again, please?
- 22      Q.     8-62(1). Do you recognize that document?
- 23      A.     Did you say 8-62 or 8-67?
- 24      Q.     8-62(1). Should I come up?
- 25      A.     Yes, I have it.

Hess - Direct/Smith

1 Q. You have it?

2 A. I have it.

3 Q. Do you recognize that document?

4 A. Yes, I do.

5 Q. Who prepared it?

6 A. I did.

7 Q. To prepare Exhibit 8-62(1), did you examine or review  
8 certain evidence in this case?

9 A. Yes, I did.

10 Q. Specifically did you examine the series of documents  
11 constituting Exhibit 8-62(2)?

12 A. Yes, I did.

13 Q. In preparing Exhibit 8-62(1), did you consider the  
14 testimony of J.J. Cafaro?

15 A. Yes, I did.

16 Q. Did you also consider a transcript of the testimony  
17 of Albert Lange?

18 A. Yes, I did.

19 Q. What information did you extract from Government's  
20 Exhibit 8-62(2) to put in this chart?

21 A. I extracted information relating to expense reports  
22 submitted by Richard Detore to U.S. Aerospace Group for  
23 dinners at -- where either Congressman Traficant was in  
24 attendance or at the Taverna Restaurant.

25 Q. Does the chart fairly and accurately summarize

Hess - Direct/Smith

1 Richard Detore's restaurant expenses as reflected in  
2 8-62(2)?

3 A. Yes, it does.

4 MR. SMITH: Your Honor, may I place Exhibit  
5 8-62(1) on the screen?

6 THE COURT: Yes.

7 BY MR. SMITH:

8 Q. Sir, is that the exhibit we've been talking about on  
9 the screen?

10 A. Yes, it is.

11 Q. All right.

12 Now, if you would begin with -- is it broken down by  
13 the years 1998 and then 1999?

14 A. Yes, it is.

15 Q. All right. If you'd start with 1998 and explain to  
16 the jury, first of all, the left-hand column, what's in the  
17 left-hand column?

18 A. That's the date that the meal was provided with the  
19 date of the meeting.

20 Q. All right. And what's in the middle column?

21 A. I'm sorry. What?

22 Q. What is represented in the middle column of the  
23 chart?

24 A. The detail column is the restaurant or the place  
25 where the meeting -- dinner meeting was held.



Hess - Direct/Smith

1 THE COURT: Would you, Mr. Smith, it's a  
2 little hard from here to read the last of those three  
3 columns. No -- well, I think if you -- you can put it back  
4 in the same size, but just try and get -- there we go. Can  
5 the jury see all three columns?

6 THE JURY: Yes.

7 THE COURT: Okay. Good.

8 MR. SMITH: Okay.

9 BY MR. SMITH:

10 Q. The middle column, would you tell us what that is?

11 A. The middle column with the detail column represents  
12 the place where the restaurant, where the dinner or the  
13 meeting took place.

14 Q. All right. And the column over on the right-hand  
15 side?

16 A. The total column, that's the actual cost of the  
17 dinner, based on the expense reports submitted by Richard  
18 Detore.

19 Q. All right.

20 And did you create -- did you add those up and create  
21 a subtotal for the year 1998?

22 A. Yes, I did.

23 Q. And what was that subtotal?

24 A. \$1,874.35.

25 Q. Did you do essentially the same process for the year



Hess - Direct/Smith

1 1999?

2 A. Yes, I did.

3 Q. All right. And do the three columns represent the  
4 same sorts of information for the year 1998?

5 A. Yes.

6 Q. And did you subtotal the 1999 expenses for  
7 Mr. Detore?

8 A. Yes, I did.

9 Q. And what was that subtotal?

10 A. \$1,801.96.

11 Q. And finally, what was the total for the whole amount  
12 for both years 1998 and 1999 combined?

13 A. \$3,676.31.

14 Q. Sir, if you would now direct your attention to  
15 Government's Exhibit 8-67(1) on the counter before you. Do  
16 you have that in front of you, sir?

17 A. I have it.

18 Q. All right. And you recognize that document?

19 A. Yes, I do.

20 Q. Who prepared it?

21 A. I did.

22 Q. To prepare that particular document, did you consider  
23 the testimony of J.J. Cafaro?

24 A. Yes, I did.

25 Q. Did you also consider transcript of the testimony of

Hess - Direct/Smith

1 Albert Lange?

2 A. Yes, I did.

3 Q. And prior to coming here today, did you also look at  
4 Government's Exhibit 8-36(1), 8-36(2), 8-36(3), and 8-38 in  
5 preparing this chart?

6 A. Yes, I did.

7 Q. And specifically what did you do in order to prepare  
8 this chart?

9 A. I looked at the receipts and the bills relative to  
10 the boat repairs or testimony indicated on a boat owned by  
11 Congressman Traficant, and from that, I took the expenses  
12 from those receipts that were submitted by Albert Lange,  
13 receipts and the bills relative to the repair of the boat.

14 Q. Okay.

15 A. And other expenses related to the boat.

16 Q. All right. What does the chart show?

17 A. It shows total expenses by payee and by year  
18 necessary to repair the boat.

19 Q. Does your chart fairly and accurately summarize,  
20 based upon the exhibits and testimony looked at, the boat  
21 repair expenses?

22 A. Yes.

23 MR. SMITH: Your Honor, may I put Exhibit  
24 8-67(1) on the board?

25 THE COURT: Yes.

Hess - Direct/Smith

1 BY MR. SMITH:

2 Q. We'll go to separate parts later, but is that the  
3 document in its whole, in its entirety?

4 A. Yes.

5 Q. All right.

6 We'll have to deal with parts of this at a time.

7 First of all, if you could describe for the jury what  
8 the left-hand column of this -- this document represents?

9 A. The left-hand column represents the date of payment  
10 of either the receipt by the contractor doing the repairs  
11 or the date -- or the check that was used to actually pay  
12 the bill.

13 Q. And then there's -- I'm sorry?

14 A. The repair, I'm sorry.

15 Q. Is there a second column that says how paid?

16 A. Yes.

17 Q. And what is -- what information did you extract from  
18 the documents to create that column?

19 A. I extracted paid receipts and bills and also checks  
20 that were actually provided by Albert Lange.

21 Q. And moving to the column referred to as payee, do you  
22 see that column on the chart?

23 A. Yes.

24 Q. All right.

25 And are there three payees on your chart?

Hess - Direct/Smith

1 A. Yes, there are.

2 Q. All right. How did you get the information to put in  
3 the payee column of this chart?

4 A. From the paid receipts, from bills that were  
5 submitted, and from checks that were written by Albert  
6 Lange.

7 Q. And who were the three payees that you were able to  
8 identify from the exhibits?

9 A. Bruce Sannino, Ernst deGroot, and Eastern Power Boat  
10 Club.

11 Q. And did you, for the years 1998 and 1999 combined,  
12 create a subtotal reflecting how much each of those persons  
13 or entities was paid?

14 A. Yes.

15 Q. All right. Let's start with Bruce Sannino. For?

16 A. Bruce --

17 Q. I'm sorry, go ahead. Go ahead.

18 A. Bruce Sannino was paid \$3,600; Ernst deGroot was paid  
19 \$16,880.62, and Eastern Power Boat Club was paid \$4,321.17.

20 Q. Now, did you also break the expenses out, not only by  
21 the identity of payee, but by which year the expense was  
22 paid in?

23 A. Yes, I did.

24 Q. And is that reflected on your chart under a portion  
25 that says amount and then two years underneath it?

Hess - Direct/Smith

1 A. Yes, it is.

2 Q. And did you create a subtotal for each year to  
3 reflect how much of the boat expenses were paid in each  
4 year?

5 A. Yes, I did.

6 Q. All right. For the year 1998, how many boat expenses  
7 had occurred in that year?

8 A. \$15,223.34.

9 Q. And for the year 1999?

10 A. \$9,578.45.

11 Q. In addition, did you also break the expenses out by  
12 category of expense?

13 A. Yes, I did.

14 Q. And is that reflected at the bottom of your chart?

15 A. Yes, it is.

16 Q. And looking at the bottom of the chart, is there an  
17 item that says expenses by category?

18 A. Yes. The -- it's broken down by a total boat repair  
19 expenses, which includes a \$600 survey and also slip rent,  
20 electric, and membership fees paid to Eastern Power Boat  
21 Club.

22 Q. And did you calculate the total repair expenses?

23 A. Yes.

24 Q. And how much were they?

25 A. \$20,480.62.

Hess - Direct/Smith

1 Q. And how about slip fees, electric, rent, membership,  
2 how much was that?

3 A. \$4,321.17.

4 Q. And what's the grand total then of expenses for the  
5 boat?

6 A. \$24,801.79.

7 Q. All right. If you'd flip that document that you have  
8 over, is there another chart on the back?

9 A. Yes, there is.

10 Q. And do you recognize that chart?

11 A. Yes, I do.

12 Q. Who prepared that chart?

13 A. I did.

14 Q. And what is that chart -- what does it show?

15 A. It shows the reimbursements that were received by  
16 Albert Lange from John J. Cafaro, the Cafaro Company, and  
17 United States Air Group, U.S. Aerospace Group.

18 Q. To prepare this chart, did you consider the  
19 transcript of Albert Lange's testimony?

20 A. Yes, I did.

21 Q. Did you also consider the testimony of J.J. Cafaro?

22 A. Yes, I did.

23 Q. Did you also, prior to coming here today, look at  
24 Government's Exhibit 8-19, 8-20, 8-21, 8-22, 8-24, 8-28,  
25 8-33, 8-35, and 8-39 in preparing this chart?



Hess - Direct/Smith

1 A. Yes, I did.

2 Q. Does your chart fairly and accurately summarize the  
3 reimbursements to Mr. Lange concerning the boat?

4 A. Yes, it does.

5 MR. SMITH: Your Honor, could I put this up?

6 THE COURT: Yes.

7 BY MR. SMITH:

8 Q. First of all, as I place the entire document up on  
9 the board, is that the document? Is that Exhibit 8-67(2)  
10 up on the board?

11 A. Yes.

12 Q. Okay. Now, again, we'll take this in parts, pull  
13 parts of it out. The first three columns, let's deal with  
14 that first.

15 What information did you extract to create those  
16 first three columns?

17 A. The first column is the date of the check. The  
18 second column is the payor of the check. Third column is  
19 the check number, the payor's check number, and the fourth  
20 column is the payee.

21 Q. Okay. And the payee is reflected on the face of the  
22 check itself, is that correct?

23 A. That's correct.

24 Q. As well as the payor?

25 A. That's correct.

Hess - Direct/Smith

1 Q. All right.

2 And then the fifth column is what?

3 A. Fifth column is the amount of the check.

4 Q. All right.

5 And summing all those checks up, what total did you  
6 come to with -- with respect to reimbursements to Albert  
7 Lange?

8 A. \$26,472.17.

9 Q. All right.

10 Now, if you compare the final total of boat expenses  
11 on Government's Exhibit 8-67(1) of \$24,801.79, compare that  
12 with -- on 8-67(2), \$26,472.17, do those numbers differ?

13 A. Yes.

14 Q. All right. And can you explain to the jury the  
15 reason for that difference?

16 A. Some items, the reimbursements, were greater than the  
17 amount of the expenses that are listed on 8-67(1).

18 Reimbursed total, \$26,472.17, the total expenses  
19 included were \$24,801.79, and the difference -- the reason  
20 for that is some expenses that were on reports submitted by  
21 Albert Lange were not included on 8-67(1) because they  
22 weren't directly related -- I couldn't determine whether  
23 they were directly related to boat repairs, and the other  
24 items, there were some overpayments by the Cafaro Company  
25 to Albert Lange.

Hess - Direct/Smith

1           And I'm not sure how they were accounted for.

2           Q.     Okay.

3           A.     Whether Albert Lange ever returned the money or not,  
4           it's only a small difference.

5                   MR. TRAFICANT:  Could you repeat the question  
6           and that answer for me, your Honor?

7                   THE COURT:  I'll have you read that back if  
8           you will.

9                   (Thereupon, the record was read back by the Court  
10          Reporter.)

11                  THE COURT:  You said something while she was  
12          reading, and she can't transcribe what you said while she  
13          was reading and I also couldn't hear what you said.  So if  
14          you'd like to -- if you remember what you said, you can say  
15          it now; just that when she's reading out loud from her  
16          equipment, she can't take down what you said, and I think  
17          you might want to repeat it.  I don't know what it was.

18                  MR. TRAFICANT:  I just wanted the last  
19          sentence, some expenses, et cetera, I didn't want --

20                  THE COURT:  Okay.  Thank you.

21                  MR. SMITH:  May I proceed, your Honor?

22                  THE COURT:  Yes.

23                  MR. SMITH:  Thank you.

24          BY MR. SMITH:

25          Q.     Mr. Hess, in Government's Exhibit 8-67(1), the items

Hess - Direct/Smith

1       that you did not include in the chart from the underlying  
2       documentation, what types of expenses were those?

3       A.     They were essentially gas charges, miscellaneous  
4       charges.

5       Q.     There were a few restaurant charges and so forth as  
6       part of the bills that were included in Albert Lange's  
7       documentary evidence that you submitted from your review of  
8       the documentation. You were unable to determine whether  
9       those directly related to the boat or not; is that right?

10      A.     That's correct.

11      Q.     And, therefore, you did not include them in 8-67(1);  
12      is that correct?

13      A.     That's correct.

14      Q.     Moving to a different area, do part of your duties as  
15      a technical adviser to criminal tax counsel in Philadelphia  
16      include identifying specific items of unreported income on  
17      federal income tax returns?

18      A.     That's correct.

19      Q.     And to perform that function, are you required to be  
20      familiar with those provisions of the Federal Internal  
21      Revenue Code that concern what constitutes income?

22      A.     Yes.

23      Q.     For how long have your duties included being able to  
24      identify specific items of unreported income on tax  
25      returns?

Hess - Direct/Smith

1 A. For over 30 years.

2 Q. Would you please describe any training that you have  
3 received, that enables you to identify specific items of  
4 income unreported income on tax returns?

5 A. Yearly attendance, continuing professional education  
6 courses, also continuing legal education courses, review --  
7 constant review on a daily basis of cases being submitted  
8 for review, technical review, both civilly and criminally.

9 Q. Have you ever been an instructor in the field of  
10 identifying specific items of income under the federal tax  
11 code?

12 A. Yes, I have.

13 Q. And please tell the jury what sorts of circumstances  
14 under which you have been an instructor in that field?

15 A. Being instructor to the different methods of proofs  
16 used to determine additional income and usually in-house  
17 Internal Revenue Service, either with IRS counsel, IRS  
18 appeals, and approximately 20 different training sessions.

19 Q. And who were the students in those instruction  
20 sessions of yours?

21 A. I'm sorry. The question?

22 Q. What type of students you have in those instruction  
23 sessions of yours?

24 A. Generally, the -- they were IRS counsel people, IRS  
25 appeals people, and IRS revenue agents.

Hess - Direct/Smith

1 Q. Are you a member of any professional associations or  
2 societies?

3 A. A member of the American Institute of Certified  
4 Public Accountants.

5 Q. Have you ever previously testified as an expert  
6 witness in federal court in the field of federal income  
7 taxation?

8 A. Yes, I have.

9 Q. Approximately how many times?

10 A. Approximately 15 times in both civil and criminal  
11 proceedings.

12 MR. SMITH: Your Honor, at this point we  
13 would tender Mr. Hess as an expert in the field of federal  
14 income taxation.

15 THE COURT: You have demonstrated that he  
16 meets the Rule 702 requiring to testify as an expert in a  
17 special knowledge, special skill and experience, training,  
18 education to qualify him. There are other issues we also  
19 have to address regarding where you're going with the  
20 particular testimony.

21 MR. TRAFICANT: Your Honor --

22 THE COURT: Maybe we want to do that over a  
23 break, Congressman.

24 MR. TRAFICANT: In qualifying an expert,  
25 isn't it a fact that the Defendant has a right to ask

Hess - Voir Dire

1 questions relative to that qualification to determine --

2 THE COURT: We need to break -- we probably  
3 need to break and do this during the jury's break because  
4 there are other issues that we also have to go through  
5 regarding this witness and his testimony here. So it's a  
6 little bit early, it's five after 10:00. If we give you a  
7 half hour break now, that's all right. Then we'll try to  
8 address all those issues so that you don't have to go  
9 without your morning break. Thank you.

10 (Proceedings in the absence of the jury:)

11 THE COURT: Congressman, you want to make  
12 inquiry of this witness?

13 MR. TRAFICANT: Yeah. I wonder if he ever,  
14 in fact, was a student at any seminars.

15 THE COURT: You can answer his questions.  
16 Maybe if you come over a little closer.

17 THE WITNESS: Yeah. If you can come over.

18 THE COURT: Do you still have people to let  
19 out?

20 DEPUTY MARSHAL: Yes, your Honor.

21 THE COURT: Okay. Sorry.

22 MR. TRAFICANT: First, your Honor, for the  
23 record, I object to the fact that I was not allowed to, in  
24 fact, question this witness relative to his qualifications  
25 as an expert in front of the jury.

Hess - Voir Dire

1                   THE COURT: We also have an obligation to  
2           look at his qualifications in terms of his testimony and  
3           probability, his opinion, and all the other issues that  
4           come up when you use an expert. When we got to a certain  
5           point in this, it wasn't clear, I didn't know exactly where  
6           the Government was going to go with this, but we have to  
7           hold some inquiry, which we don't do in front of the jury,  
8           and if you want or they want to go back over some of the  
9           qualifications that he's stated, we can do that with the  
10          jury here.

11                 Maybe there's a resume or something like that that  
12          one side or the other wants to get into, but we also have  
13          to look at how his opinion, if he's going to give one, if  
14          he is qualified as an expert, holds up against the  
15          standards that we have to test it against, and that we  
16          don't do in front of a jury. So it's one of those things  
17          where something gets near to that, then it's good to take  
18          the jury out and explore.

19                 If you want to ask any questions about his  
20          qualifications, you may.

21                 MR. TRAFICANT: Now you give me the chance to  
22          ask about his qualifications after he has summarized  
23          several charts and documents on the board. Now you stop us  
24          for qualification. Why shouldn't he have been qualified as  
25          an expert before we proceeded with any of his testimony?



Hess - Voir Dire

1                   MR. SMITH: Your Honor, there's a very clear  
2                   explanation for that. I wanted there to be a clear  
3                   demarcation in this record between this witness doing  
4                   something, for instance, what Agent Samansky did earlier,  
5                   which was simply to be a Rule 1006 summary witness, which  
6                   is what the first three charts were, as opposed to  
7                   tendering an opinion as an expert witness, which is what  
8                   we're going to get into now for the first time. And that  
9                   is why I specifically waited to qualify this gentleman as  
10                  an expert so this jury wouldn't be confused as to what was  
11                  expert testimony and what wasn't.

12                 MR. TRAFICANT: This jury is not confused --

13                 THE COURT: No, but this is --

14                 MR. TRAFICANT: The jury has heard testimony  
15                  from a witness who has yet to be determined an expert.

16                 THE COURT: But he wasn't giving expert  
17                  testimony then, but now they're trying to set him up so he  
18                  can give expert testimony, and that's the process we're now  
19                  in out of the hearing of the jury because that's what's  
20                  required.

21                 So if you have any questions about anything, you can  
22                  ask this witness and go forward. The Government still has  
23                  not finished the inquiry they have to make in order to  
24                  establish that he, in fact, could testify about particular  
25                  items in a particular way as an expert.

Hess - Voir Dire

1 BY MR. TRAFICANT:

2 Q. Did you ever testify on behalf of a citizen who is  
3 being prosecuted by the IRS?

4 A. No, I haven't.

5 Q. Did you ever participate in any training sessions  
6 where you were the student?

7 A. Yes, I have.

8 Q. How many?

9 A. Many over 30 years. I would have to say probably  
10 about 25. That I participated -- your question is whether  
11 have I participated in training --

12 Q. No. How many times were you a student where some  
13 other IRS expert had, in fact, given you and trained you in  
14 giving you knowledge of the IRS Code?

15 A. I'd say approximately 15 times.

16 Q. In 33 years?

17 A. In 33 years.

18 Q. And you're familiar with the changes of the tax code?

19 A. I'd like to think I am, yes.

20 Q. And have you been qualified as an expert in previous  
21 trials?

22 A. Yes, I have.

23 Q. Have you ever testified in Cleveland?

24 A. No, I haven't.

25 Q. Do you have a certification to show that you're, in

Hess - Voir Dire

1 fact, an instructor?

2 A. I'm sorry, Congressman. I didn't hear you.

3 Q. Do you have certification that shows that you are a  
4 registered IRS instructor of record?

5 A. I have -- identification of courses that I have  
6 taught at, in fact, letters of commendation.

7 Q. I didn't ask you that.

8 A. You said certification?

9 Q. Are you certified as an instructor by the IRS?

10 A. I have taken -- yes, I have taken the basic  
11 instructor training to be certified as an instructor years  
12 ago.

13 Q. Do you have the certificate with you, sir?

14 A. No, I don't.

15 Q. Do you have one?

16 A. Yes, I do.

17 Q. Is it on file?

18 A. Yes. It's -- well, it's within my personnel file.

19 When you say on file, I mean -- I don't know that there's a  
20 separate file where these are -- in other words, a public  
21 file where these are kept.

22 Q. How many files?

23 A. But there's a list -- there's a list of people that  
24 are called as --

25 Q. How many are listed?

Hess - Voir Dire

1 A. Many, sir.

2 Q. Certified? Do you have a guesstimate? Is it one,  
3 five?

4 A. I have no idea.

5 Q. Um-hum.

6 A. I wouldn't even --

7 Q. Did you bring with you your resume and your vitae?

8 MR. SMITH: Objection; been given in the  
9 Jencks material, your Honor.

10 THE COURT: Okay. I think it was -- it was  
11 submitted to you, Congressman.

12 MR. TRAFICANT: I'm talking to him now.

13 THE COURT: That's true.

14 BY MR. TRAFICANT:

15 Q. Did you bring it with you?

16 A. I sent a copy here. I didn't bring it with me, no.

17 Q. Do you normally just send a copy?

18 A. I send a copy to the prosecuting attorney.

19 MR. TRAFICANT: I will let the Court decide,  
20 but I object to the fact that you've allowed this man to  
21 identify documents and discuss documents before you  
22 officially admitted him as an expert.

23 THE COURT: Okay. Well, all right. You can  
24 make that objection. But I think as the Government has  
25 pointed out, they're using you in two different respects as

Hess - Voir Dire

1 a witness here, and we're just beginning a process of  
2 looking at whether or not you can give opinion testimony as  
3 an expert, which is not what he was doing in the beginning.  
4 He was explaining and identifying documents.

5 MR. TRAFICANT: I object because he was  
6 summarizing documents that had been presented to him by the  
7 Prosecution. He was testifying under oath.

8 MR. SMITH: And Rule 1006 specifically  
9 permits that, your Honor.

10 THE COURT: All right.

11 MR. TRAFICANT: Having said that, if there's  
12 anything else for the Court, I'd like to use the restroom  
13 unless you have something else.

14 THE COURT: We have a little more to do here  
15 now. You want a break, I'll give you a five-minute break  
16 now, and we'll come back and do the rest of this, but we  
17 still have some other things.

18 MR. TRAFICANT: I'd rather proceed now and  
19 have the five-minute break later.

20 THE COURT: Okay. Are you going to use this  
21 witness to give an opinion at some point? I don't know if  
22 you are or aren't but sounds like that's what you were  
23 going to do.

24 MR. SMITH: Yes, your Honor. With respect to  
25 Exhibit 6-3, which is the final summary chart.

Hess - Voir Dire

1                   MR. TRAFICANT: In that regard, I ask if the  
2                   witness had submitted my tax returns to the prosecutors as  
3                   well.

4                   MR. SMITH: Your Honor, what I intend to  
5                   elicit from this witness is that the tax returns of the  
6                   Congressman were given to him in discovery, which are  
7                   Exhibit 6-1 and 6-2. I intend to elicit -- this agent  
8                   looked at those two tax returns, and that based upon the  
9                   exhibits which are identified on Exhibit 6-3 and the  
10                  testimony of Lange, Cafaro, and Sabatine, which he has  
11                  reviewed transcripts of with respect to Lange and Sabatine  
12                  and heard in court with respect to Cafaro and Alan  
13                  Sinclair, that it is his opinion that in the year 1998, the  
14                  tax return did not reflect \$13,000 of income from John J.  
15                  Cafaro, \$2,500 from Allen Sinclair, \$15,223.34 in value of  
16                  boat expenses that were paid on his -- on the Congressman's  
17                  behalf, and \$2,400 from James Sabatine.

18                 I anticipate asking this witness whether any of those  
19                 items are reflected on the tax return. I anticipate the  
20                 witness will say no.

21                 In '99, then I anticipate asking him what unreported  
22                 income there was for that year, and I expect him to testify  
23                 to the amounts in the right-hand column under 1999  
24                 concerning Sinclair payments, boat expenses, the welder,  
25                 generator. I'll then ask the witness to compare those to

Hess - Voir Dire

1       Line 22 of the return -- respective returns, which is total  
2       income, to add the additional unreported income to the  
3       reported total income to come to a corrected total income  
4       line for each year.

5                   MR. TRAFICANT: Your Honor, I have found tax  
6       returns '94, '95, '96, '97. Is it a fact you submitted  
7       these? Were these submitted to you, Mr. Hess?

8                   THE WITNESS: I looked at them, yes, sir.

9                   MR. TRAFICANT: Were they submitted to you?

10                  THE WITNESS: No. They were part of the  
11       evidence that I looked at. They weren't submitted to me.

12                  MR. TRAFICANT: Who sent you the evidence?  
13       Could you hear me?

14                  THE WITNESS: No, I didn't.

15                  MR. TRAFICANT: Who sent you the evidence?

16                  THE WITNESS: No one sent me the evidence. I  
17       looked at them here in Cleveland. They were part of the  
18       file, the case file here in Cleveland.

19                  MR. TRAFICANT: Did you, in fact, include  
20       everything that was submitted on those returns? Did you  
21       return everything that was submitted to you?

22                  THE WITNESS: Yes, I did, sir.

23                  MR. TRAFICANT: Relative to '98 and '99? Did  
24       you?

25                  THE WITNESS: Yes.

Hess - Voir Dire

1 MR. TRAFICANT: What purpose did you have to  
2 look at my file before '98, sir?

3 THE WITNESS: I looked at those files before  
4 the indictment came out, current only for the year 1998 and  
5 1999 and for no other purpose; just to extract the type of  
6 file information that was reported on the returns from 1993  
7 to see if it had any significance for 1998 or 1999.

8 MR. TRAFICANT: So you decided before I was  
9 indicted to start an investigation into this matter from  
10 Philadelphia?

11 THE WITNESS: I never investigated this  
12 matter.

13 MR. TRAFICANT: You said you looked at my tax  
14 returns before I was indicted.

15 THE WITNESS: That was not part of the  
16 investigation, sir.

17 MR. TRAFICANT: Why would you, in fact, take  
18 the time, precious time of such a high paid Government  
19 employee as you, to look into a tax return of a man not yet  
20 to be indicted?

21 THE WITNESS: That's what we normally do to  
22 see if there's any information that would affect the years  
23 in issue.

24 MR. TRAFICANT: Who ordered you to do that?

25 THE WITNESS: Who ordered me to do that?



Hess - Voir Dire

1 MR. TRAFICANT: Is there an echo in here?

2 THE WITNESS: I thought -- not that I can  
3 hear.

4 MR. TRAFICANT: Who ordered you to do that?

5 THE WITNESS: I was assigned the duty to  
6 assist in the trial preparation of this case and came under  
7 the direction of the Assistant U.S. Attorney handling the  
8 case.

9 MR. TRAFICANT: Who was the Assistants U.S.  
10 Attorney?

11 THE WITNESS: Craig Morford.

12 MR. TRAFICANT: So he asked you to look  
13 before the indictment came down?

14 THE WITNESS: We looked at the -- I looked at  
15 the exhibits that came down initially before an indictment  
16 came down.

17 THE COURT: Hold on a second. I think the  
18 jury's about to come.

19 (Pause.)

20 THE COURT: Congressman -- Congressman?

21 MR. TRAFICANT: Yes.

22 THE COURT: This isn't really -- this is a  
23 hearing for a limited purpose. It's not really a sort of  
24 cross-examination. The Government probably should voir  
25 dire this witness and ask the questions that need to be

Hess - Voir Dire

1 asked, or somebody should ask the question. It's a limited  
2 hearing, and so --

3 MR. TRAFICANT: May I respond?

4 THE COURT: Yes. You can respond to that  
5 part of it.

6 MR. TRAFICANT: I object to any IRS agent or  
7 any IRS employee being an expert since they don't recall 60  
8 percent of their calls and make 50 percent mistakes on the  
9 actions that they do take.

10 THE COURT: Thank you, sir.

11 Now, I'll ask if you would do some basic voir dire  
12 that will get us through this limited purpose here, which  
13 has to do with opinion testimony by an expert witness.

14 MR. SMITH: Yes, your Honor.

15 THE COURT: Thank you.

16 BY MR. SMITH:

17 Q. Showing you Exhibit 6-3 on the counter before you,  
18 you have that, sir?

19 A. Yes, I do.

20 Q. What is it?

21 A. It's a summary of additional income from  
22 Mr. Traficant's 1998, 1999 tax return based on the evidence  
23 and the testimony submitted in the case.

24 Q. Who prepared that document?

25 A. I did, sir.

Hess - Voir Dire

1 Q. Is your analysis limited to the tax years 1998 and  
2 1999?

3 A. Yes, it is.

4 Q. To prepare this document, did you examine the  
5 following exhibits: 6-1, 6-2, 1-3(1) through 11 inclusive,  
6 1-4(1) through (4) inclusive, 1-9, 1-32(1) and (2), 8-31,  
7 8-32, 8-43, 8-46, and 8-47?

8 A. Yes, I did.

9 Q. Did you also consider the testimony of J.J. Cafaro  
10 and transcripts of the testimony of Allen Sinclair, Albert  
11 Lange, and James Sabatine?

12 A. Yes, I did.

13 Q. Does your chart fairly and accurately summarize  
14 additional income for James Traficant, Junior, for the  
15 years 1998 and 1999?

16 A. Yes, it does.

17 Q. Does your chart focus on Line 22 of the two  
18 respective tax returns?

19 A. Yes, it does.

20 Q. Why?

21 A. That's the -- where the income, additional income  
22 would eventually have been reported on the tax return.

23 MR. SMITH: May I put this on the overhead,  
24 your Honor?

25 THE COURT: Yes.



Hess - Voir Dire

1 Q. Using Exhibit 6-3, would you please summarize what  
2 additional unreported items of income you found.

3 A. I'm sorry. Could you repeat the question?

4 Q. Using Exhibit 6-3 on the counter before you --  
5 withdrawn. Let me ask you a couple other questions first.

6 Did you examine Exhibit 6-1, the 1998 tax return for  
7 Congressman Traficant?

8 A. I looked at Exhibit 6-1, yes.

9 MR. TRAFICANT: Objection. The objection is  
10 these are the things that he is now showing that should  
11 have been done before this man was qualified as an expert,  
12 and he has now, by his own questions, brought about that  
13 information. He should have gone through his vitae, his  
14 record, how many times he testified, his experience, his  
15 knowledge, but not talk about any specific problem with  
16 this case until he testified about this case. And I  
17 object, and this is a violation.

18 THE COURT: Thank you.

19 MR. TRAFICANT: And Mr. Smith has, in fact,  
20 now validated it.

21 THE COURT: Would you continue, please?

22 MR. SMITH: Yes, your Honor.

23 BY MR. SMITH:

24 Q. Did you look at Government's Exhibit 6-2, the 1999  
25 tax return for Congressman Traficant?

Hess - Voir Dire

1 A. Yes, I did.

2 Q. Looking at both of those returns, were you able to  
3 account for -- from the face of the return, all reported  
4 items of income?

5 A. Yes, I was.

6 Q. Were you then able, based upon your review of the  
7 evidence that we've identified, able to identify other  
8 items of unreported income for each tax year?

9 A. Yes, I was.

10 Q. All right.

11 Using Exhibit 6-3, would you please explain what  
12 those unreported items of income that you found were.

13 A. First --

14 Q. Starting in 1998.

15 A. For the year 1998, there would be funds received from  
16 John J. Cafaro, based on his testimony, and Exhibit 8-31  
17 and 8-32; funds from Allen Sinclair for the year 1998 of  
18 \$2,500, based on Government's Exhibit summary chart 1-9 and  
19 testimony of Allen Sinclair; boat expenses paid for the  
20 taxpayer \$15,223.34 taken from my summary that's 67-1; and  
21 funds received from James Sabatine, which is of \$2,400,  
22 which was taken from transcripts of testimony of James  
23 Sabatine.

24 Q. And what was the total additional income for the year  
25 1998?

Hess - Voir Dire

1 A. \$33,123.34.

2 Q. How much was reported on the tax return?

3 A. Total income reported was \$138,985.

4 Q. Did you calculate a corrected total income that  
5 should have been for Line 22?

6 A. Total corrected income should have been \$172,108.34.

7 Q. Now, with respect to the \$2,400 item for Mr. Sabatine  
8 in the year 1998, you see that on the chart?

9 A. Do I have another chart?

10 Q. With respect to the \$2,400 item for Sabatine in the  
11 year 1998, do you have that item on your chart?

12 A. Yes, I do.

13 Q. All right.

14 In connection with that item, did you examine  
15 Government's Exhibits 1-32(1) and 1-32(2)?

16 A. I'm not sure what 1-32 --

17 Q. Would you look at Exhibit 1-32(1) on the counter  
18 before you?

19 A. Oh, yes, I did. I looked at it.

20 Q. What is that document?

21 A. Campaign election reports filed with the Federal  
22 Election Commission.

23 Q. And did you examine that exhibit on the issue of  
24 whether or not Mr. Sabatine's payment to the Congressman  
25 was a campaign contribution?

Hess - Voir Dire

1 A. Yes, I did.

2 Q. All right.

3 Did you, for purposes of your analysis, classify the  
4 Sabatine payment as a campaign contribution?

5 A. No, I did not.

6 Q. Based on 1-32(1), why did you do that?

7 A. It wasn't reported on the Federal Election Commission  
8 report that was filed.

9 MR. TRAFICANT: What was the amount?

10 THE WITNESS: Under the Federal Election  
11 Commission report?

12 MR. TRAFICANT: Yeah.

13 THE WITNESS: There was a contribution of  
14 \$300 from Mr. Sabatine listed in the Federal Election  
15 Commission report. The total amount given or testimony  
16 from James Sabatine was \$2,400.

17 MR. TRAFICANT: I see.

18 BY MR. SMITH:

19 Q. All right. Moving to the year 1999, would you please  
20 again summarize, using Exhibit 6-3, what the unreported  
21 income was in that year.

22 A. The first item are funds from Allen Sinclair, based  
23 on the summary Exhibit 1-9 and testimony of Allen Sinclair  
24 of \$30,000. Next item are boat expenses paid in the year  
25 1999, \$9,578.45, based on my summary Exhibit 8-67(1). Next



Hess - Voir Dire

1 item are the purchase of a welder by U.S. Aerospace Group  
2 for \$2,415.39 and \$491.74, which it was taken from Exhibit  
3 8-43 and the testimony of Albert Lange.

4 Next item is purchase of a generator by Cafaro  
5 Management Company for \$2,714.91, and that's taken from  
6 Exhibit 8-46 and 8-46 and 8-47 and the transcript testimony  
7 of Albert Lange.

8 Q. Did you total the amount of unreported income for the  
9 year 1999?

10 A. Yes, I did.

11 Q. And how much total additional income was there?

12 A. \$45,200.49.

13 Q. Did you add that to the total income that was  
14 actually reported on Line 22 of the return?

15 A. Yes, I did.

16 Q. And what was the resulting corrected total income  
17 figure for Line 22?

18 A. \$185,3363.49.

19 MR. SMITH: Your Honor, that is where I wind  
20 up.

21 THE COURT: Very well.

22 MR. TRAFICANT: I object to this man being  
23 deemed an expert. I don't believe there's any IRS agent  
24 that's an expert. I think they're thieves that prey upon  
25 the American people. Other than that, I have no other

Hess - Voir Dire

1 knowledge if he even knows how to spell his name.

2 MR. SMITH: Your Honor, the Government's  
3 position is that is an insufficient basis in law to exclude  
4 this man as an expert and request an instruction that the  
5 Congressman not make such speech type remarks in front of  
6 the jury during his cross-examination.

7 THE COURT: Well, it is certainly an  
8 insufficient basis in law. It is an opinion you hold,  
9 Congressman, but it's not --

10 MR. TRAFICANT: Yes. I would not be subject  
11 to having anybody instruct me what I can or can not ask a  
12 witness in this trial.

13 THE COURT: I want to just go over some of  
14 the factors that we have to consider and make sure we  
15 handle it. There's no question but that the subject matter  
16 is appropriate. There's no question but that this witness  
17 is qualified as an expert. We also have to look at  
18 reliability of what he's doing here, what his -- the  
19 methods that he's used.

20 He does show specialized knowledge that would assist  
21 the jury, who is the trier of fact, in understanding how,  
22 depending on what they do as a jury, they might find  
23 certain facts that they'll have to find. It helps them  
24 understand evidence. It's relevant; it's based on  
25 sufficient facts and data, and they come directly from the

Hess - Voir Dire

1 case itself. So that's important.

2 MR. TRAFICANT: One last question, your  
3 Honor.

4 THE COURT: Wait. I am not through.

5 This is an analysis that has to be carefully done, so  
6 be patient with me, and let me get through it.

7 There has to be a proper factual basis, and we have  
8 that in the evidence that has been relied upon in this  
9 case, that this expert has looked at.

10 This is not guesswork or speculation, but it's  
11 actually based on experience and expertise of this  
12 gentleman.

13 MR. TRAFICANT: Well --

14 THE COURT: I need to -- I need to ask just a  
15 couple of questions about the application of the principles  
16 and methods that you used to the test that you were given  
17 and have you talk a little bit about that to me so that I  
18 understand how you came to the principles that you applied.

19 I understand your factual basis, but can you talk for  
20 a minute about your method and your principles that you  
21 applied?

22 THE WITNESS: Using the provisions of the  
23 Internal Revenue Code to determine the taxability of the  
24 evidence that's been presented is basically what I would be  
25 testifying to.

Hess - Voir Dire

1           THE COURT: Okay. And in terms of putting  
2           together this -- these -- this summary chart that was up on  
3           the board just now, tell me exactly what you did. Just  
4           start at the bottom in terms of your methodology and  
5           putting that together.

6           THE WITNESS: Essentially what I did, as far  
7           as the boat expense and the chart on the boat expenses.  
8           Was divided out by year -- for instance. The Internal  
9           Revenue Code provides a tax basis a taxpayer would have to  
10          pick up income in the year in which property is received  
11          for services rendered.

12          The property would be received in the year the boat  
13          expense is paid so I broke it up by year.

14          THE COURT: Okay. Just keep going.

15          THE WITNESS: Oh. And I did that by taking  
16          the date of the check, the date of payment that was  
17          indicated in paid receipts that were given by the  
18          contractor to Mr. Lange and dates for payments that were  
19          indicated on bills that were also submitted by the  
20          contractors; also determining that using the expenses that  
21          were actually used for boat repairs. I did that by  
22          checking them into invoices or bills that were presented by  
23          each individual contractor to Mr. Lange, and Mr. Lange  
24          submitted that as part of the evidence that he submitted to  
25          the Government.

Hess - Voir Dire

1 THE COURT: All right.

2 THE WITNESS: And I also took the amounts  
3 from that, also.

4 THE COURT: Very well. Anything further?

5 MR. SMITH: I have nothing, your Honor.

6 THE COURT: Thank you. All right. I'll  
7 make the finding that the subject matter is appropriate for  
8 expert testimony, that the testimony is relevant, and  
9 there's sufficient facts, it's a product of a reliable set  
10 of principles and methods the expert has applied in a  
11 reliable way. He's qualified. He has support, proper  
12 factual support, and basis for what he's doing, and there  
13 is no just guesswork or speculation about this, it's  
14 something that can be relied upon.

15 And so we will permit you to go forward with this  
16 expert in front of the jury after we take a break.

17 MR. TRAFICANT: I offer now an objection for  
18 the record that you allowed evidence that he will be  
19 displaying and talking about before he was qualified and  
20 let that be shown to the jury, and you did not allow this  
21 qualification process to be seen by the jury in any other  
22 form.

23 THE COURT: Okay. Congressman, Rule 1006 is  
24 different than what we were looking at. Here we're looking  
25 at Federal Rule of Evidence 702 and the requirements that

Hess - Resumed Direct/Smith

1 have been imposed by Supreme Court of the United States on  
2 courts to be in a gatekeeper kind of position before any  
3 expert offers anything to a jury. And we'll follow with  
4 the law. Your objection is preserved for the record. I  
5 think we should take a break. Okay?

6 MR. TRAFICANT: How much time we have?

7 THE COURT: Ten minutes. Thank you.

8 MR. TRAFICANT: Thank you, your Honor.

9 THE COURT: You're welcome. Thank you, sir.  
10 You may stand down.

11 THE WITNESS: Thank you.

12 (Thereupon, a recess was taken.)

13 THE COURT: Sir, you're still under oath.

14 Mr. Smith.

15 RESUMED DIRECT EXAMINATION OF MR. HESS

16 BY MR. SMITH:

17 Q. Mr. Hess, showing you what's been marked as  
18 Government's Exhibit 6-3 on the counter before you, you  
19 have that, sir?

20 A. Yes, I do.

21 Q. Do you recognize that item?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is a summary additional income for James A.  
25 Traficant's 1998 and 1999 personal income tax returns.

Hess - Resumed Direct/Smith

1 Q. And who prepared that chart?

2 A. I did.

3 Q. Is your analysis limited to the tax years 1998 and  
4 1999 on that chart?

5 A. Yes, it is.

6 Q. In preparing that chart, did you look at Government's  
7 Exhibits 6-1 and 6-2 in order to prepare that chart?

8 A. Yes, I did.

9 Q. And could you tell the jury what Exhibit 6-1 is?

10 A. 6-1 is the income tax return of James A. And Patricia  
11 Traficant for years 1998.

12 Q. Was that a certified copy of the tax return?

13 A. Yes, it is.

14 Q. And what is Exhibit 6-2?

15 A. 6-2 is a certified copy of James A., Patricia's 1999  
16 income tax return.

17 Q. And did you use those two documents, 6-1 and 6-2, in  
18 part, in preparing your chart, which is Exhibit 6-3?

19 A. Yes, I did.

20 Q. In -- before coming here today, have you also  
21 examined Exhibits 1-3(1) through (11) inclusive, 1-4(1)  
22 through (4) inclusive, Exhibit 1-9, Exhibit 1-32(1),  
23 Exhibit 1-32(2), Exhibit 8-31, 8-32, 8-43, 8-46, and 8-47?

24 A. Yes, I did.

25 Q. Did you consider the testimony of J.J. Cafaro in

Hess - Resumed Direct/Smith

1 preparing this chart?

2 A. Yes, I did.

3 Q. Did you consider a transcript of the testimony of  
4 Raymond Allen Sinclair, Albert Lange, and James Sabatine in  
5 preparing this chart?

6 A. Yes, I did.

7 Q. And what method did you use in preparing this chart  
8 that is available to someone who's doing a tax computation?

9 A. Used the specific items method of proof.

10 Q. Would you explain to the jury what the specific items  
11 method is?

12 A. You identify specific items of income, which are not  
13 reported on the tax return.

14 Q. And in doing your computation, did you use a cash  
15 basis or an accrual basis?

16 A. Congressman's is a tax basis, being a taxpayer. It's  
17 a cash basis for determining the additional amount.

18 Q. Are all individual taxpayers cash basis taxpayers?

19 A. Yes.

20 Q. In examining -- excuse me, in looking at Exhibits 6-1  
21 and 6-2, did you focus upon any particular line item of  
22 that return, returns --

23 A. I focused on Line 22 of the return, which is total  
24 income.

25 Q. In looking at Line 22, from the face of the returns,



Hess - Resumed Direct/Smith

1 the returns and their various attachments, were you able to  
2 account for all of the income that was reported on the face  
3 of the return?

4 A. Yes, I was.

5 Q. From the evidence that you looked at, did you find  
6 any income items that were not reported on the 1998 and  
7 1999 returns?

8 A. Yes, I did.

9 Q. And does your chart, Exhibit 6-3, fairly and  
10 accurately summarize those items of specific unreported  
11 income for the Congressman for the years 1998 and 1999?

12 A. Yes, it does.

13 MR. SMITH: Your Honor, may I display Exhibit  
14 6-3 on the board?

15 THE COURT: Yes.

16 BY MR. SMITH:

17 Q. Beginning in the year 1998, would you please use  
18 Exhibit 6-3 and identify which items of additional  
19 unreported income you located?

20 A. The first item, just covering year 1998, were funds  
21 received from John J. Cafaro, which was taken from Exhibit  
22 8-3(1), 8-32, and the testimony of John J. Cafaro.

23 Next item are funds from Allen Sinclair received in  
24 the year 1998. And that was taken from summary --  
25 Government's Exhibit summary Exhibit 1-9 and the testimony

Hess - Resumed Direct/Smith

1 of Allen Sinclair. And the amount is \$2,500.

2 The third item are boat expenses, which were paid for  
3 the taxpayer year 1998, and that was taken from my summary  
4 Exhibit 8-67(1), and that amount was \$15,223.34. And  
5 fourth item were funds received from James Sabatine, and  
6 that's taken from the testimony of James Sabatine, and the  
7 amount is \$2,400.

8 Q. Now, with respect to that last \$2,400 item of James  
9 Sabatine, did you look at the question of whether that  
10 should be attributed to be income or a campaign  
11 contribution?

12 A. Yes, I did.

13 Q. Did you classify that \$2,400 figure as a campaign  
14 contribution?

15 A. No, I did not.

16 Q. In not classifying it as a campaign contribution, did  
17 you look at Government's Exhibit 1-32(1)?

18 A. Yes, I did.

19 Q. And what is Government's Exhibit 1-32(1)?

20 A. Reports filed with the Federal Elections Commission  
21 related to the contributions received of over \$200 that has  
22 to be reported to Federal Elections Commission.

23 Q. In the year 1998, did Exhibit 1-32(1) show a \$2,400  
24 contribution from James Sabatine in that year?

25 A. No, it does not.

Hess - Resumed Direct/Smith

1 Q. Does it show any contribution from Mr. Sabatine that  
2 year?

3 A. Yes. It shows a \$300 contribution. I believe the  
4 date -- I have to go into the report -- is July 20, 1998.

5 Q. But, does the report show a \$2,400 contribution?

6 A. No, it does not.

7 MR. TRAFICANT: Object after the fact. It  
8 was asked and answered, and they continue to do that as  
9 well as I do.

10 THE COURT: Thank you, Congressman.

11 BY MR. SMITH:

12 Q. All right. Did you then arithmetically generate a  
13 sum total of unreported additional income for the year  
14 1998?

15 A. Yes, I did.

16 Q. What was the total of the additional income?

17 A. \$33,123.34.

18 Q. Now, how much income was actually reported on Line 22  
19 of the tax return as is?

20 A. \$138,985.

21 Q. And did you add the additional income to the income  
22 that had already been reported to arrive at a total  
23 corrected income figure for Line 22?

24 A. Yes, I did.

25 Q. And what is that figure?

Hess - Direct/Smith

1 A. \$172,108.34.

2 Q. Moving to the year 1999, did you identify any  
3 specific items of unreported income for that year?

4 A. Yes, I did.

5 Q. All right.

6 And using Exhibit 6-3, would you please explain to  
7 the jury what those specific items were?

8 A. The first item were funds received from Allen  
9 Sinclair, based on Exhibit 1-9 and the testimony of Allen  
10 Sinclair and the amount received in that month, 1999, was  
11 \$30,000; next item boat, expenses paid for the taxpayers,  
12 payer for the year 1999 of \$9,578.45. Next item --

13 Q. Where did that come from, sir?

14 A. That came from my summary Exhibit 8-67(1).

15 Q. Go ahead. Next item?

16 A. Next item is purchase of a welder by USAG for the  
17 Congressman and the amount broken down into two amounts  
18 \$2415.39 and \$491.74, and that's taken from Government's  
19 Exhibit -- or Exhibit 8-43, plus the testimony of Allen --  
20 not of Allen Sinclair. It was taken from Albert Lange --  
21 sorry -- taken from the testimony of Albert Lange. Next  
22 item is a purchase of a generator by Cafaro Management for  
23 Congressman Traficant in the amount is \$2,714.91, and  
24 that's taken also from the testimony of Albert Lange and  
25 Exhibit 8-46 and 8-47.

Hess - Cross

1 Q. Did you add up those respective items of unreported  
2 income for the year 1999?

3 A. Yes, I did.

4 Q. What was the total of the additional unreported  
5 income?

6 A. \$45,200.49.

7 Q. How much income, total income, was actually reported  
8 on Line 22 of the return?

9 A. \$140,163.

10 Q. And did you add the additional income to the income  
11 that had already been reported to arrive at a total  
12 corrected income figure for Line 22?

13 A. Yes, I did.

14 Q. What was that figure?

15 A. \$185,363.49.

16 MR. SMITH: Your Honor, I have no further  
17 questions of the witness at this time.

18 THE COURT: Thank you. Congressman.

19 CROSS-EXAMINATION OF BRUCE HESS

20 BY MR. TRAFICANT:

21 Q. How are you, Mr. Hess?

22 A. I am fine, Congressman.

23 Q. How long have you stayed in Cleveland?

24 A. I'm sorry. I didn't hear your question.

25 Q. How long have you stayed in Cleveland?

Hess - Cross

- 1 A. Would you repeat that again? How long what --
- 2 Q. How long have you been in Cleveland?
- 3 A. Off and on, probably total of about five weeks.
- 4 Q. And who paid your expenses?
- 5 A. The Government.
- 6 Q. Who authorized the expenditure?
- 7 A. The office of Chief Counsel.
- 8 Q. Who is the Chief Counsel?
- 9 A. The Chief Counsel is B. John Williams currently Chief  
10 Counsel of the IRS.
- 11 Q. Did you not at one time work for the Commissioner?
- 12 A. I don't know whether -- was B. John the Commissioner?
- 13 Q. I'm asking the questions. Did you ever work for a  
14 commissioner directly?
- 15 A. Yes.
- 16 Q. Who was it?
- 17 A. The Commissioner is -- Charles B. Rosatti is the  
18 Commissioner of the IRS.
- 19 Q. Who was the Commissioner you worked for directly?
- 20 A. I worked directly -- I work directly for the  
21 Commissioner is the title, not commissioner -- I work under  
22 the Commissioner of Internal Revenue. It's Charles B.  
23 Rosatti. My boss is the Chief Counsel, who is B. John  
24 Williams, who I believe now under the new reorganization  
25 probably is equal with the Commissioner or now under the

Hess - Cross

1 Commissioner.

2 Q. Did you ever work for any commissioner underneath  
3 their supervision and report directly to any IRS  
4 commissioner?

5 A. No, I did not.

6 Q. Where do you live?

7 A. I live in Philadelphia.

8 Q. To the best of your knowledge, do you know if there  
9 are tax experts in Ohio?

10 A. I have no present knowledge of that, no. I'm sure  
11 there are -- you're talking about within the IRS?

12 Q. I'm not talking about the rotary.

13 Are you a member of the IRS, sir?

14 A. Sure there are tax experts within the State of Ohio.

15 Q. Isn't Cincinnati one of the biggest regional offices  
16 in the IRS?

17 A. I wouldn't say one of the biggest. It's a large  
18 district office. I would say it's one of the largest  
19 agencies.

20 Q. Are there tax experts in Cincinnati?

21 A. I imagine there are, sir.

22 Q. Why is it that you were chosen to come all the way  
23 from Philadelphia?

24 A. They wanted to bring somebody else out from a  
25 different area I guess to get a fresh look at the case. I

Hess - Cross

1 was just assigned a duty to come out, Congressman.

2 Q. Who were they? Who assigned you?

3 A. My boss and my immediate boss, and the -- and also  
4 the director of the criminal tax division in Washington.

5 Q. Who is the director of the criminal tax division?

6 A. The director now? Barry Finkelstein now works under  
7 -- the current one is now on maternity leave. I imagine  
8 the acting right now is Barry Finkelstein.

9 Q. Were you appointed and directed by memo or letter?

10 A. Neither. I was just told verbally.

11 Q. And you were told verbally by what person?

12 A. My immediate boss, the area counsel of Philadelphia,  
13 Ken Rubin.

14 Q. Was he notified by the Washington office to assign  
15 you?

16 A. I guess he was.

17 THE COURT: I don't think we got his name.

18 Ken -- I don't think we got his name. Ken?

19 THE WITNESS: Ken Rubin, R-U-B-I-N.

20 Q. And there was a Mr. Finkelstein. And what is his  
21 role.

22 A. He's currently the head of the -- I guess the acting  
23 head of the criminal tax function. Nancy Jardini was his  
24 boss, and we -- she's now currently on maternity leave.  
25 Barry Finkelstein was directly under her, and I believe



Hess - Cross

1       that he's assistant or was assistant to the criminal tax  
2       function, the associate, actually associate Chief Counsel  
3       of criminal tax.

4       Q.     So your boss is in the Philadelphia office, right?

5       A.     My immediate boss, yes, sir.

6                   THE COURT: How do you spell Nancy's last  
7       name; do you know? Nancy?

8                   THE WITNESS: J-A-R-D-I-N-I.

9                   THE COURT: Thank you.

10       BY MR. TRAFICANT:

11       Q.     Now, you said your boss got an order from the head of  
12       the criminal division, correct, IRS?

13       A.     I'm not exactly sure how that worked out. He  
14       indicated to me that I would be assigned to go out to  
15       Cleveland to go to trial.

16       Q.     Mr. Hess, isn't it a fact that the orders came out of  
17       Washington, D.C. to your boss at the request of the  
18       Cleveland Prosecutors and IRS agents? Yes or no.

19       A.     I'm not aware of that. No, sir. I don't -- I don't  
20       know exactly the chain that actually caused me to come out  
21       here.

22       Q.     Did you ask?

23       A.     No, I did not.

24       Q.     Now, isn't it a fact that you started looking at  
25       Traficant tax returns before Jim Traficant was indicted?

Hess - Cross

1 Yes or no.

2 A. Yes.

3 Q. Why would an IRS expert in Philadelphia be reviewing  
4 a taxpayer's returns in the State of Ohio, subject to  
5 custodial and memorialized records being in Cincinnati?

6 A. I didn't look at the records until I came out here  
7 and was assigned to trial, and it was part of the evidence  
8 that was here.

9 Q. Mr. Hess, are you now saying you did not review my  
10 charts before I was indicted?

11 A. You're talking about your tax returns, Congressman?

12 Q. Yes.

13 A. Did I refute them?

14 Q. Did you review my tax returns before I was indicted?

15 A. I looked at them, sir.

16 Q. Well, what -- what do you do when you just -- did you  
17 just look at the name?

18 A. I didn't examine them. I looked at them for purposes  
19 of determining the exact items, particular items that were  
20 actually reported on the return.

21 Q. So you were sent from Philadelphia to Cleveland, is  
22 that your testimony, before I was indicted?

23 A. Yes, sir.

24 Q. Who led to you believe I was going to be indicted?

25 A. The investigation was ongoing, and the timing of it

Hess - Cross

1       was there was just prior to an indictment being handed down  
2       by the Grand Jury.

3       Q.     How do you know it was prior to being handed down by  
4       a Grand Jury? Did you have a Grand Jury knowledge?

5       A.     No. I was out here -- I was just out here reviewing  
6       and taking a look at the evidence preliminarily and just  
7       taking a look at it, and I know that it was prior to the  
8       indictment. The timing of the indictment and when it was  
9       going to be reached, I have no independent --

10      Q.     At whose request were you in Cleveland, Ohio, from  
11      Philadelphia before I was indicted?

12      A.     My superior.

13      Q.     Doesn't, in fact, the IRS memorialize through  
14      documents like the FBI does their activities?

15      A.     When documents -- with documents, yes, sir. Not  
16      every activity is memorialized.

17      Q.     When you look or become involved in a case, do you  
18      write a report similar what the FBI writes as known -- you  
19      know what a 302 is of the FBI?

20      A.     I'm not really familiar with a 302.

21      Q.     Does the IRS agent, when they meet with somebody,  
22      summarize, memorialize the contents of their communication  
23      with that subject?

24      A.     If they're communicating with the subject, normally  
25      they would, yes.

Hess - Cross

1 Q. Did you make reports back to Philadelphia and/or to  
2 the Justice Department in Washington relative to your  
3 findings before the Traficant indictment?

4 A. No, I did not.

5 Q. Did you make reports to the Prosecution seated here?

6 A. No, I did not. The only thing I did for the  
7 Prosecution was prepare the schedules that you see here.

8 Q. Who asked you to do that?

9 A. The Assistant U.S. Attorney, sir.

10 Q. Is he seated here?

11 A. Yes, he is.

12 Q. What's his name?

13 A. Craig Morford.

14 Q. Could you identify him?

15 A. Sitting right over there.

16 Q. How many times did you meet with Mr. Morford before I  
17 was indicted?

18 A. Approximately five times.

19 Q. How many days did you spend in Cleveland away from  
20 your Philadelphia office before I was indicted?

21 A. Approximately two weeks.

22 Q. Who paid those expenses?

23 A. The Bureau of Chief Counsel, IRS.

24 Q. Located where?

25 A. Washington.

Hess - Cross

1 Q. Did you look at the tax return of Jim Traficant of  
2 1993, sir?

3 A. I believe I did, sir, yes.

4 Q. Do you believe, or do you know, Mr. Hess?

5 A. I'm not sure how far back the returns, available  
6 returns that we had for those years. I know it was  
7 probably -- I'm guessing because I don't have it exactly in  
8 front of me.

9 It was probably four years prior to the years at  
10 issue here in this case: I'm not sure if it was '93 or  
11 '94.

12 MR. TRAFICANT: '94 return.

13 MR. SMITH: May I see it?

14 MR. TRAFICANT: '93 return.

15 MR. SMITH: Okay.

16 Q. What years were you here to investigate, Mr. Hess?

17 A. The years that ultimately ended up being indicted  
18 were the years 1998, 1999 were the years --

19 Q. I didn't ask you what I was ultimately indicted for.  
20 What years were you here to summarize for?

21 A. I was here to summarize the years that were indicted,  
22 sir.

23 Q. What were those years?

24 A. 1998 and 1999.

25 Q. Would you say that's when you started?



Hess - Cross

1 A. Started what, sir?

2 Q. Looking at Traficant documents? Would you look at  
3 the top of it? Are you familiar with IRS forms?

4 A. I may have.

5 Q. Are you --

6 A. This is the -- what are you saying started with? I  
7 probably looked at the return to get an idea of what the  
8 types of income that were reported in prior years.

9 Q. What year is that -- would you read the name of the  
10 year?

11 A. It's 1993.

12 Q. So you went back to '93. Does '93 through '99 have a  
13 particular statutory requirement?

14 A. I'm sorry. I didn't hear your question.

15 MR. SMITH: Objection to any testimony about  
16 law.

17 Q. Are you familiar with the Internal Revenue Service  
18 Code?

19 A. Internal Revenue Service Code or the Internal Revenue  
20 Code?

21 Q. Internal Revenue Service Code.

22 A. I don't know what you mean by Internal Revenue  
23 Service Code.

24 Q. Do we have an Internal Revenue Service?

25 A. We do.

Hess - Cross

1 Q. You want to split hairs? Is there a difference  
2 between an Internal Revenue Code?

3 A. An Internal Revenue Service Code?

4 Q. Yes.

5 A. Well, yes, there is. The Internal Revenue Code is  
6 the law that's passed by Congress relating to taxes of the  
7 country.

8 Q. Mr. Hess, you're an expert. Is there a difference  
9 between an IRS Code or an Internal Revenue Code?

10 A. Yes.

11 Q. What's the difference?

12 A. The difference is an IRS Code is something that is  
13 within -- it's -- it would be an internal code -- as far as  
14 I understand the question being an internal code relating  
15 to IRS. The Internal Revenue Code is something very  
16 different. It's the law relating to tax.

17 Q. So you are an expert on the Internal Revenue laws; is  
18 that correct?

19 A. Well, yes, sir.

20 Q. Is there a statutory limit relative to charging a  
21 taxpayer on an income tax violation?

22 A. There was a statutory limit, yes, sir.

23 Q. What is it?

24 A. It's six years.

25 Q. Is that why you went back to 1993?



Hess - Cross

1 A. No. That is not why I went back to 1993.

2 Q. Why did you go back to 1993?

3 A. To take a look at the -- if it would have any effect  
4 on the years that either could have been or were indicted.  
5 It was just part of the evidence that was available here in  
6 the office that had been surfaced during the investigation.

7 Q. Who gave you that evidence?

8 A. The U.S. Attorney, sir.

9 Q. Which one?

10 A. Craig Morford.

11 Q. You're an IRS agent. Did you meet with the chief of  
12 the IRS department in Cleveland, Ohio?

13 A. No, I did not.

14 Q. Did you meet with Mr. Perkins, criminal division IRS?

15 A. Yes, I did.

16 Q. How many times did you meet with Mr. Perkins?

17 A. He was the investigating IRS agent. I met with him a  
18 number of times, many times.

19 Q. Is Mr. Perkins an expert?

20 A. I consider him an expert in conducting investigations  
21 of the criminal tax -- criminal tax investigations and  
22 putting together criminal tax cases for the IRS.

23 Q. Couldn't a criminal tax investigator put together the  
24 chart you put together?

25 A. No. He's not qualified to do that. He's qualified to

Hess - Cross

1 do criminal investigations, not to summarize tax and tax  
2 liability.

3 Q. In other words, you're saying that criminal tax  
4 investigators never do summary reports in a criminal trial;  
5 is that your testimony?

6 A. I wouldn't say never. It would be highly unusual.

7 Q. Don't you think it's highly unusual for a guy to come  
8 from Philadelphia on orders from D.C. to come all the way  
9 to Cleveland?

10 MR. SMITH: Objection as to orders from D.C.,  
11 which has not been established.

12 Q. Wasn't it a fact that your boss was --

13 THE COURT: Whoa, wait. The objection is  
14 well taken.

15 Q. Wasn't it a fact that your boss indicated to you that  
16 Washington, D.C. wanted you to come out on this case?

17 MR. SMITH: Objection, hearsay.

18 THE COURT: Sustained.

19 Q. Mr. Hess, did you come here to swim in Lake Erie?

20 A. No, I did not.

21 Q. Did you ever work on my farm?

22 A. No, I did not.

23 Q. Did I ever hug you?

24 A. No.

25 Q. Did you ever hug me?

Hess - Cross

1 A. No, sir.

2 Q. Did you audit the '93 return?

3 A. No, I did not.

4 Q. What did you look at in the '93 return?

5 A. Just a categorization of the income tax report --

6 Q. For what year?

7 A. -- determining if it had any effect in subsequent  
8 years. Sometimes there are items on the return that are  
9 either half reported or a disclosure of certain information  
10 that may relate to any years that would become an issue in  
11 the case; for instance carry-forward --

12 THE REPORTER: Could you repeat that?

13 THE COURT: Carry-forward losses.

14 THE WITNESS: Right.

15 Q. Mr. Hess, if I am being too loud, I'm a little  
16 hoarse, but I would ask you to speak clearly and to speak  
17 up and in a manner in which you can be recorded. And I  
18 would appreciate yes or no answers.

19 Were you aware of the fact that Jim Traficant's wages  
20 were being garnished since 1991?

21 A. Yes.

22 Q. Were you asked to do a summary of that?

23 A. No.

24 Q. Now, this was in with the tax returns that I got. I  
25 want you to look at that document. Does that refresh your

Hess - Cross

1 memory, sir?

2 A. This is a transcript of account for year 1980,  
3 showing tax deficiency assessment of payments.

4 Q. You didn't see this form before?

5 A. No, I did not.

6 Q. It was just stuck in between '93 and '94?

7 A. It wasn't part of the information I received, sir.

8 Q. So you weren't asked to summarize a half million  
9 dollars that the Congressman paid in taxes due to a civil  
10 trial, were you?

11 A. No, sir.

12 Q. Has there been a change in the status of burden of  
13 proof in a civil trial, sir?

14 A. Status of a burden of proof changed in 1998 somewhat.

15 Q. Do you know?

16 A. In civil matters.

17 Q. Do you know who authored that legislation?

18 A. No, I do not.

19 Q. Did the status change relative to the seizure of  
20 Americans' homes in 1998?

21 A. Yes, sir.

22 Q. Do you know who authored that law?

23 A. No, I do not.

24 Q. Did the status of wage attachments change in 1998?

25 A. As far as I -- as far as I can remember. The act

Hess - Cross

1       that was passed in 1998, yes, it did.

2       Q.     The status of property change as a result of the 1998  
3       law?

4       A.     Yes, sir.

5       Q.     Do you know who authored that legislation?

6       A.     No, I do not, sir.

7       Q.     What is the difference now in the burden of proof in  
8       a civil tax case than there was before 1998?

9       A.     Prior to 1998, the burden of proof remained totally  
10      with the taxpayer. In the 1998 litigation matters, the  
11      burden would shift to the Government unless the taxpayer  
12      failed or did not cooperate or provide documentation, in  
13      which case, the burden would still remain with the  
14      taxpayer.

15      Q.     But if cooperation was made through an accountant,  
16      the burden of proof was on whom, sir?

17      A.     If the case was mitigated and cooperation was made  
18      with the IRS and the taxpayer fully cooperated with the  
19      IRS, the burden would be in mitigating the case with the  
20      IRS.

21      Q.     Isn't it a fact that home seizures dropped from  
22      10,000 to 50 the very first year to 51 seizures of homes  
23      versus 10,067 the first year?

24      A.     I am not aware of that, sir, the statistics.

25      Q.     Are you aware the wage attachments dropped from 3.1

Hess - Cross

1 million to 500,000 the first year?

2 A. No. I'm not aware of that.

3 Q. Are you aware property liens dropped, went from  
4 168,000 to, in fact, 160,000?

5 A. No, I'm not aware of that.

6 Q. In the first year?

7 Are you aware of the fact the IRS recommended a veto  
8 to President Clinton of the '98 tax bill because of the  
9 burden of proof and the seizure laws?

10 A. No, I'm not aware of that. I did -- the burden of  
11 proof issue did change. I am aware of that, sir.

12 Q. Did you look at the 1994 return, sir?

13 A. Yes, I did.

14 Q. And to what degree and extent did you review the '94  
15 return?

16 A. I'm sorry. Could you repeat the question, sir?

17 Q. To what extent and degree did you, in fact, review  
18 the '94 tax return?

19 A. I just looked at it, sir.

20 Q. What did you look at, the names, signatures?

21 A. I looked at the categories of reported income that  
22 were reported on the return.

23 Q. Now --

24 A. And other items that would effect or could affect the  
25 years at issue.

Hess - Cross

1 Q. So in order to do that, you had to make a brief  
2 cursory audit and compare it to '93, wouldn't you?

3 A. No, I did not do an audit.

4 Q. I didn't ask you if you did an audit. You did a  
5 cursory audit review to compare and analyze '94 and '93.  
6 Did you or did you not?

7 A. I compared 1993 and 1994.

8 Q. Well, how did you compare them?

9 A. Just by category, sir, what was reported. I didn't  
10 make a determination of what was reported was improper;  
11 whether there was any unreported income for those  
12 particular years to look at.

13 Q. Did you only look at the front page, Mr. Hess?

14 A. No, I did not.

15 Q. If you didn't look at the front page, that meant you  
16 opened it up, didn't you?

17 A. Yes, I did.

18 Q. Tell me what sections in 1994 you looked at.

19 A. I looked at all the file forms that came with 1994.

20 Q. Tell me the file forms you looked at, looking through  
21 it.

22 A. There was a schedule B when it was reported, interest  
23 income, a schedule C, where there was business income  
24 reported, and a schedule B, but it was for rental income or  
25 whatever type of income was reported, category of income

Hess - Cross

1       that was reported on the schedule A. I looked at all the  
2       types of income that were reported.

3       Q.     Isn't every page something to do with income, sir?

4       A.     No. Some have to do with deductions. For instance,  
5       itemized deductions there would be a separate page for  
6       that.

7       Q.     Do you know if they were itemized?

8       A.     Probably did not check that, but taking a look at it,  
9       there were itemized deductions.

10      Q.     So you took a pretty good cursory review of '94,  
11      didn't you?

12      A.     I looked at it, sir.

13      Q.     Now, did you do a look at '95?

14      A.     Yes, I did.

15      Q.     Did you compare '95 with '94?

16      A.     Yes, I did.

17      Q.     Did you compare '95 with '94 and '93?

18      A.     Yes, I did.

19      Q.     Did you look at all of the income matter in 1995?

20      A.     I looked at the schedules that were of reported  
21      income, sir, yes.

22      Q.     Who asked you to do that?

23      A.     No one, sir.

24      Q.     That's just a part of your normal expertise?

25      A.     Yes.



Hess - Cross

1 Q. To really make sure that what you were documenting  
2 is, in fact, a fact?

3 A. I don't understand that question, sir.

4 Q. Do you document that it is a factual conclusion when  
5 you're done looking at an item of IRS income?

6 A. Just a document of the types of income that were  
7 reported on a -- there's nothing -- I didn't do anything to  
8 either audit or examine particular items that were on  
9 there.

10 I just looked at the particular categories of income  
11 that were reported and possibly the amount of gross  
12 receipts that were reported for a particular category, and  
13 that was it, to see if anything -- and compared it with  
14 prior years, to see if anything was different, much  
15 different from prior or subsequent years of returns.

16 Q. So you say you looked at, for example, Sabatine,  
17 right, his transcript?

18 A. I did not look at transcripts, sir, no.

19 Q. Well, how can you summarize Mr. Sabatine's  
20 involvement if you didn't look at --

21 A. You're talking about the transcripts, the Court  
22 transcripts, sir? I did -- I did read Sabatine's  
23 transcripts. I'm sorry, sir.

24 Q. Um-hum.

25 And did you interview Mr. Sabatine?

Hess - Cross

1 A. No, I did not.

2 Q. Did you know if he was charged with a felony  
3 violation of serious nature?

4 A. Only if it was in the transcript, sir.

5 Q. Did you read the entire transcript?

6 A. Of James Sabatine, yes, I did.

7 Q. Do you know that there was, in fact, a serious felony  
8 that had been plea bargained?

9 A. Yes, sir.

10 Q. Did that lead you to look at Mr. Sabatine's tax  
11 returns?

12 A. No, sir.

13 Q. Was it suggested to you by the Government that you do  
14 so?

15 A. No, sir.

16 Q. So your summary of Mr. Sabatine is what he said on  
17 the witness stand, right?

18 A. Yes, sir.

19 Q. Did you corroborate it through any other evidentiary  
20 proof?

21 A. The only evidentiary proof is what was submitted in  
22 the court proceedings, and it was just his testimony, sir.

23 Q. Well, now, let's go to 1996. We're getting a little  
24 closer now.

25 How much of a look did you give '96 returns?

Hess - Cross

1 A. I just looked at the return.

2 Q. All of the income revenue sections?

3 A. All the various categories of reported income and all  
4 the schedules attached.

5 Q. Well, being -- not to interrupt you, excuse me. I  
6 thought you were finished.

7 Being an expert, tell the jury how many segments of  
8 an IRS return, in fact, contain income documentation?

9 A. There's many different segments. Depends on the  
10 income and the activity that's involved.

11 There's schedules for almost every -- every type of  
12 income, except if you're a lay person where you get a W-2  
13 or some other category, but you have a business, depending  
14 on the type of business, you have a separate schedule.  
15 Each category of income is usually reported on a separate  
16 schedule.

17 Even interest income, if it's over a certain amount,  
18 has to be reported on a separate schedule. So there's many  
19 different schedules that have to be filed with an income  
20 tax return related to reporting of income.

21 Q. Well, in 1996 -- there are approximately what, 15  
22 pages there? How many pages would include income revenue  
23 matters? Would the first page?

24 A. Yes.

25 Q. Would the second page?

Hess - Cross

1 A. No. The second page would not itemize deductions.

2 It doesn't relate to --

3 Q. You didn't look at deductions?

4 A. I probably looked at them, sir. I mean, when you say  
5 look at -- I just looked at the dollar figures that were on  
6 there.

7 Q. So you did review the dollar figures on Page 2?

8 A. I did not review them. I looked at them, sir.

9 Q. All right. Fine.

10 A. Then there's a schedule C that was filed with the  
11 return.

12 Q. And did you look at that? Is that -- is that income?

13 A. It -- it reflects income and deductions relating to a  
14 business, yes, sir.

15 Q. So out of the first four pages, you looked at three  
16 for income. Now, would you look at the fifth page? Go  
17 ahead. We can hear you.

18 A. The fifth page is just supporting documentation for  
19 deductions taken on the Schedule C.

20 Q. Did you look at it?

21 A. Very, very quickly.

22 Q. Okay.

23 A. And the sixth page is a schedule E file, reports  
24 supplemental income and loss from rental activity. In this  
25 case, there's a specific activity relating to oil and gas

Hess - Cross

1 wells that's reported.

2 Q. Fine. What was the amount?

3 A. The net amount, which is the gross income received  
4 from it, the gas well, less expenses \$2,400, sir.

5 Q. So you did look at that. So that's five out of the  
6 first seven pages of income?

7 A. Yes, sir.

8 Q. You missed one date, didn't you? You might be going  
9 a little too fast, or did I make a mistake?

10 What is that page?

11 A. That's a computation of self-employment tax relating  
12 to the schedule C reported income.

13 Q. So that's now six out of eight pages with income,  
14 right?

15 A. Yes, sir.

16 Q. Look at the next page.

17 A. It represents -- I believe these are supporting  
18 schedules for computation of business expenses and  
19 unreimbursed employee expenses, which I believe relates to  
20 your congressional salary, the statutory amount that's  
21 allowable for congressional -- this relates to deductions.

22 Q. Does it say my name on it?

23 A. No. It says unreimbursed employee expenses and says  
24 FPR --

25 Q. Is there a name on the --

Hess - Cross

1 MR. SMITH: Objection.

2 THE WITNESS: James A. and Patricia  
3 Traficant, both of yours.

4 THE COURT: Okay. You need to stop  
5 interrupting. Okay? Slow down.

6 MR. TRAFICANT: Fine.

7 Q. Did you look at that page?

8 A. Very quickly, sir.

9 Q. Does it include anything to do with income?

10 A. No, it does not.

11 Q. Okay. Six out of nine. Look at the next page.

12 A. This page contains a summary of your W-2 gross income  
13 and withholding of the various taxes that are required to  
14 be withheld relating to your W-2 income.

15 Q. You would have looked at that, wouldn't you?

16 A. Yes, sir.

17 Q. That's seven out of ten. Would you go to the next  
18 one?

19 A. That's a computation of the amount of itemized  
20 deductions to which you would be allowed since there's a  
21 statutory limit based on the amount of your adjusted gross  
22 income, separate.

23 Q. Does it have an effect on income, though?

24 A. Effect on deductions, not on the --

25 Q. Doesn't deductions -- don't deductions have an effect

## Hess - Cross

- 1 on income?
- 2 A. Gross income or taxable income?
- 3 Q. Taxable income.
- 4 A. Yes, it does.
- 5 Q. Did you look at that page?
- 6 A. Very quickly, sir.
- 7 Q. Eight out of 11. What's the next page?
- 8 A. Summarization of schedule A.
- 9 Q. What is that, sir?
- 10 A. It's computation of deductions, allowable deductions
- 11 that the -- or deductions which were claimed for state and
- 12 local taxes, real estate taxes, and so forth.
- 13 Q. Did you look at that?
- 14 A. Yes, I did.
- 15 Q. That's nine out of 12.
- 16 What's the next page?
- 17 A. Next page contains a listing of deductions relating
- 18 to Patricia Traficant, schedule C.
- 19 Q. And what does it deal with?
- 20 A. This is deductions claimed on the tax return.
- 21 Q. Does that not affect income?
- 22 A. Yes, it does.
- 23 Q. Did you look at it?
- 24 A. Took a quick look at it, sir.
- 25 Q. 10 out of 13. What's the next page?

Hess - Cross

1 THE COURT: Wait a minute, we need you to  
2 speak louder because I don't think people in the back can  
3 hear you anymore so just talk into the microphone if you  
4 would.

5 MR. TRAFICANT: I'll help you with the pages,  
6 Mr. Hess.

7 THE WITNESS: Thank you.

8 Q. Are we at 10 out of 13 now?

9 A. I haven't counted, sir.

10 Q. What's the next page?

11 A. Has to do with the deductions relating to the oil and  
12 the gas well property reported on schedule A.

13 Q. Did you look at that?

14 A. I took a quick look at it, sir, yes.

15 Q. That's 11 out of 14.

16 A. This is a different IRS filing form; has nothing to  
17 do with the return that you filed. That's part of the  
18 processing of the filed tax return.

19 Q. Would you, in fact, read what it says in the upper  
20 right-hand corner?

21 A. It gives a number, and it says criminal  
22 investigation.

23 Q. And what was the date of the year?

24 A. This is a 1996 tax year.

25 Q. Fine.



Hess - Cross

1 Did you look at that, sir?

2 A. Yes, I did, sir.

3 Q. You're a criminal investigator, aren't you?

4 A. No. I'm not a criminal investigator.

5 Q. You summarize criminal investigation work, do you  
6 not?

7 A. Yes, I do.

8 Q. So you would look at that, wouldn't you? Now we're  
9 12 out of 15. What's the last one?

10 A. That's your W-2 from the U.S. House of  
11 Representatives.

12 Q. Is that income?

13 A. Yes, it is.

14 Q. So fair to say after having looked, you looked at 13  
15 of 16 pages, right?

16 A. Yes, sir, I probably looked at all the pages, the 16  
17 out of 16.

18 Q. And why wasn't a criminal investigation listed on a  
19 '96 return?

20 A. I don't know, sir. That's handled by the criminal  
21 investigation unit. They must have had an ongoing  
22 investigation, which involved that particular tax year.

23 Q. Do you know if there were forms for '95 and '94 and  
24 '93, sir, of that nature?

25 A. No, sir. No, sir.

Hess - Cross

1 Q. Well, we'll, come back to that. But in 1996, there  
2 was a criminal investigation document placed in the return  
3 that was filed in evidently Cincinnati; is that correct?

4 A. Yes, sir.

5 Q. You then looked at the '97, which is now moving  
6 towards your target dates; yes or no?

7 A. Yes.

8 Q. Could you identify what this is, sir?

9 A. It's a form attached where this indicates that it's a  
10 criminal investigation, has either put a hold on the  
11 account or has put in -- these two years were part of the  
12 years I think that were initially investigated.

13 Q. So '95; '93 and '94 were not?

14 A. I'm not sure if they were ever part of the criminal  
15 investigation or not, sir. Statute of limitations, they  
16 probably were not part of the criminal investigation years.

17 Q. Well, what is the statute of limitations again?

18 A. I'm sorry, sir. Could you repeat that?

19 Q. What is the statute of limitations for the Internal  
20 Revenue Code?

21 A. The Prosecution is generally six years from either  
22 the due date of the return or the date the return is filed.

23 Q. Do you own a home?

24 A. Yes, sir, I do.

25 Q. In what office site are you actually located?

Hess - Cross

- 1 A. Philadelphia.
- 2 Q. On what street?
- 3 A. Market Street.
- 4 Q. Is there anything special about that office? Is it a
- 5 major national office?
- 6 A. No, sir. At one time it was a regional office, and
- 7 now it's the office where the area counsel for CT is now
- 8 located.
- 9 Q. Did you interview Mr. Sinclair?
- 10 A. I was present when Mr. Sinclair -- when he came up to
- 11 the office was there. I did not interview him, no.
- 12 Q. Who was all present when you were there from
- 13 Philadelphia?
- 14 A. Craig Morford and Don Samansky, and I -- I believe
- 15 they were the ones that were present when he initially came
- 16 up.
- 17 Q. And there were no local IRS agents in the room?
- 18 A. No, sir, there weren't.
- 19 Q. Now, you said you listened to Mr. Cafaro's testimony?
- 20 A. Yes, sir.
- 21 Q. And, in fact, you were seated right here, were you
- 22 not?
- 23 A. Yes, sir.
- 24 Q. And you heard his testimony?
- 25 A. Yes, sir.

Hess - Cross

1 Q. Are you aware that both Mr. Sinclair and Mr. Cafaro  
2 had received plea agreement deals with the Government?

3 A. Yes, sir.

4 Q. Now, Al Lange, did you -- did you meet with  
5 Mr. Sabatine when he come up to meet with the IRS or FBI?

6 A. No, I did not.

7 Q. Did you -- were you at any meetings with Mr. Cafaro?

8 A. No, I was not.

9 Q. Any meetings with Mr. Lange?

10 A. I attended one meeting with Mr. Lange.

11 Q. And when was that?

12 A. When was that, sir?

13 Q. Yes.

14 A. That was -- I guess about a month ago.

15 Q. What is the IRS reporting mechanism to memorialize a  
16 summary of a meeting interview called?

17 A. There really isn't a special form where you have to  
18 fill out, memorialize a meeting. Normally, it's done like  
19 an interoffice memo where you put down, summarizing where  
20 agents investigate the case and go out and contact a  
21 witness, and it's done by the person who's conducting the  
22 interview of the witness.

23 Normally, if you go out and talk to somebody and they  
24 don't have either much to say or does not really --  
25 anything, they're just getting some documentary evidence,

Hess - Cross

1 normally, the memorialization of that would be nothing more  
2 than just a notation in the agent's report; would be in the  
3 report.

4 Q. Were there any prosecutors in the room at that time  
5 when you met with Mr. Lange?

6 A. Yes.

7 Q. Who were they?

8 A. Mr. Morford.

9 Q. Were there any FBI agents in there when you met with  
10 Mr. Lange?

11 A. No, sir.

12 Q. Were there any IRS agents in there when you met with  
13 Mr. Lange?

14 A. I don't remember whether Don Samansky was there or  
15 not. I was there, but we would be the only IRS people that  
16 would have been there.

17 Q. Did you write a summary report on any of the meetings  
18 you attended relative to Mr. Lange and Mr. Sinclair?

19 A. No, I did not.

20 Q. Did you, in fact, conduct a cash review of Traficant  
21 activities during the years 1998 and 1999?

22 A. No, I did not.

23 Q. Did you meet with any FBI agents and ask if they had  
24 any cash transactions in the last ten years involving  
25 Mr. Traficant and somebody else?

Hess - Cross

1 A. No, I did not.

2 Q. Is this case about cash, sir?

3 A. Yes, sir.

4 Q. Is it about cash coming in?

5 A. Yes, sir.

6 Q. Now, there's no physical evidence other than the  
7 testimony of these witnesses. Would it not be prudent to  
8 investigate the use of cash by the Defendant?

9 MR. SMITH: Objection; assumption contrary to  
10 fact.

11 THE COURT: Thank you. The objection is  
12 sustained. Don't answer that.

13 Q. Anyone ever suggest that a cash expense investigation  
14 be conducted on Congressman Traficant?

15 A. No, sir.

16 Q. How long you been a criminal investigator?

17 A. I'm not a criminal investigator. I am an agent who  
18 assists in a criminal investigations.

19 Q. For how many years?

20 A. 30 years.

21 Q. Now, you find you have no physical evidence, don't  
22 you try to go out and see if the guy bought a Cadillac, or  
23 if the guy bought a horse, or see if the guy bought a boat?  
24 Yes or no.

25 MR. SMITH: Objection. He said he's not a

Hess - Cross

1 criminal investigator.

2 THE COURT: Objection sustained.

3 Q. Now, when you looked at the receipts of these boat  
4 repairs, how would you know that Mr. Lange and Mr. DeGroot  
5 weren't doing \$10 worth of work and putting \$5,000 in their  
6 pockets?

7 A. I'm only looking at the direct evidence, the invoices  
8 and the bills.

9 Q. You're looking at the invoices and the bills only,  
10 right?

11 A. And the payments, sir.

12 Q. Did you ever ask any FBI agent if they had any proof  
13 that, in fact, that had or had not occurred?

14 A. I just used the evidence that was presented, sir.

15 Q. And that was through the transcripts?

16 A. Yes, sir.

17 Q. And the documents?

18 A. Yes, sir.

19 Q. Did any agent say that they had conducted such an  
20 investigation?

21 MR. SMITH: Objection, hearsay.

22 THE COURT: Sustained.

23 Q. Now, isn't it a fact that a Mr. Sannino received  
24 \$3,600?

25 A. Yes, sir.





Hess - Cross

1 Q. You know if he received that in one payment or in two  
2 payments?

3 A. According to the records that I looked at or  
4 reviewed, he received it -- I think he received a \$600  
5 payment and a \$3,000 payment. There were two payments.

6 Q. Now, in looking at the summary, did you ask what the  
7 payments were for?

8 A. It was indicated in Mr. Lange's testimony that the  
9 payments to Bruce Sannino were for work he was doing on the  
10 boat.

11 Q. Did you read that transcript well?

12 A. Yes, sir.

13 Q. Wasn't it a fact that Mr. Sannino did the boat survey  
14 and didn't do any work?

15 A. He received \$3,000, and apparently that received was  
16 applied to the work that Ernst deGroot was doing.

17 Q. So on the so-called boat expenses, you just took the  
18 testimony; you took the cancelled checks, and you put them  
19 on the chart?

20 A. That's correct, sir.

21 Q. Did you ask for any and all bank accounts of any of  
22 the individuals you have just testified about?

23 MR. SMITH: Objection. Not his function.

24 THE COURT: Okay. It's maybe a good time to  
25 break for lunch. We're at 12:00. The objection is

Hess - Cross

1       sustained.

2               This witness wasn't engaged for that purpose. Are  
3       you ready to take a break, Congressman, or you have a  
4       couple questions?

5               MR. TRAFICANT: Your Honor, I didn't want to  
6       keep the jury late. I didn't realize the time. I think we  
7       should quit now. I have other questions.

8               THE COURT: The jury will have lunch. We'll  
9       be back at 1:30, and remember all those admonitions about  
10      letting yourselves be exposed to anything in any way  
11      regarding this case that isn't inside the courtroom. Enjoy  
12      your lunch.

13              (Proceedings held outside the presence of the jury:)

14              We're going to take you out this side first so that  
15      we don't have overcrowding out here. This half of the  
16      courtroom is going to go out now, and those of you on this  
17      side just wait a minute. We'll then take you out. I think  
18      we'll let the jury -- we haven't coordinated with the jury.  
19      Okay. We're going hold the jury for a few minutes. The  
20      rest of you can leave.

21              Sir, you can step down.

22              We're going to recess until 1:30 and resume at 1:30.  
23      We'll let the jury go after you all have left. Just taking  
24      people out in pieces.

25              MR. SMITH: Very good, your Honor.

Hess - Cross

1 (Thereupon, a luncheon recess was taken.)

2 Wednesday Session, March 20, 2002, at 1:30 P.M.

3 THE COURT: Sir, you're still under oath.

4 BY MR. TRAFICANT:

5 Q. How are you, Mr. Hess?

6 A. I'm fine, Congressman.

7 Q. I notice the prosecutors refer to you as Bruce. Are  
8 you that close with them now?

9 A. I'm sorry?

10 Q. I notice the prosecutors referred to you as Bruce.  
11 Are you that close with them now?

12 A. Am I that close with the prosecutors?

13 Q. Yes.

14 A. Yes, we're pretty close.

15 Q. You have a title for your position?

16 A. Yes, I do.

17 Q. What is it?

18 A. Technical adviser to the area counsel, criminal tax.

19 MR. TRAFICANT: It's the '93 return.

20 MR. SMITH: All right.

21 MR. TRAFICANT: Your Honor, '93 return.

22 THE COURT: Fine.

23 Q. Could you identify what year that is, and hand it  
24 back to me?

25 A. 1993.

Hess - Cross

1 Q. I want to refer to you a page in the back of this  
2 document. Would you read what the service center is? Can  
3 you see it there?

4 A. Cincinnati.

5 Q. And can you read what, in fact, it says in the block?

6 A. In the block, it's a number, and 17 221 107 704 24-4,  
7 criminal investigation.

8 Q. So now you recall that there was a criminal  
9 investigation as early as 1993?

10 MR. SMITH: Objection, objection.

11 THE COURT: You didn't -- I don't think that  
12 was his testimony before, Congressman. Congressman?

13 MR. TRAFICANT: Yes?

14 THE COURT: I don't think that was his  
15 testimony before, was it?

16 MR. TRAFICANT: He said that -- you have the  
17 court reporter. I don't want to disrupt the jury. He said  
18 he wasn't aware of anything before '96. We can look at  
19 that at a break, I guess.

20 THE COURT: All right.

21 BY MR. TRAFICANT:

22 Q. When did you first see a document on Jim Traficant?

23 A. Over a year ago -- about a year ago, I'm sorry.

24 Q. Would that be about February of 2001?

25 A. Yes, sir.

Hess - Cross

1 Q. Well, then, why were you looking at my documents much  
2 earlier, earlier tax return before I was indicted?

3 A. It was about that time that I was asked to come out  
4 and assist in the preparation of the case being prepared.

5 Q. Isn't it a fact that the farm was officially  
6 designated as a hobby rather than a business?

7 MR. SMITH: Objection. Relevance of hobby  
8 situation.

9 THE COURT: Okay. The objection's overruled.  
10 You can answer that if you know. But tell him which form  
11 we're talking about, which year, which --

12 MR. TRAFICANT: In any year.

13 Q. Isn't it a fact that the farm was designated by the  
14 IRS as a hobby and not a business?

15 A. I don't have firsthand knowledge of that.

16 Q. When you reviewed the reports, did you look at the  
17 farm activity for income?

18 A. Yes, there was initially more items in there relating  
19 to a -- relating to the farm activity that did not relate  
20 to a -- the issue of a hobby loss.

21 Q. Briefly explain -- briefly the difference between a  
22 hobby and a business.

23 A. I'm sorry, Congressman. Could you repeat that  
24 question?

25 Q. Briefly explain to the jury the difference between a

Hess - Cross

1 hobby and a business.

2 A. A hobby loss is an activity that's conducted not for  
3 profit. A business is an operation, which is conducted for  
4 profit. That's for -- that's really a tax definition.

5 Q. Did you audit my '98 return?

6 A. No, I did not.

7 Q. Did you have knowledge if my '98 return was audited?

8 A. I have knowledge that your '98 return was  
9 investigated.

10 Q. Well, when the IRS investigates, do they audit or  
11 not?

12 A. Yes, they do.

13 Q. Do you have knowledge that my '99 return was audited?

14 A. The term has a civil context. A return for 1998 was  
15 examined and investigated by the Criminal Investigation  
16 Division, which involves looking at every item on the tax  
17 return.

18 Q. Why was there a criminal investigation in '93  
19 included in my stack of discovery?

20 A. I don't know whether there was any criminal  
21 investigation of the 1993 return.

22 Q. What does it mean when the IRS says that we are to  
23 only supply a voluntary tax report?

24 A. There isn't a provision where a -- in the Code where  
25 the filing of a report is voluntary.

Hess - Cross

1 Q. Well, then, why is it known that tax returns are  
2 supposedly, quote unquote, voluntary?

3 A. The compliance with the laws of the Internal Revenue  
4 Code are supposed to be voluntary. The action requiring of  
5 filing a return certainly is not voluntary.

6 Q. Isn't it a fact that you don't make a return, they'll  
7 seize your rubber ducky? Yes or no.

8 MR. SMITH: Objection.

9 THE COURT: You can answer that from what you  
10 understand.

11 THE WITNESS: Would you repeat the question,  
12 please, sir?

13 Q. Isn't it a fact if you don't file a tax return they  
14 can come out, seize your rubber ducky or anything else?

15 A. Would you repeat that again, sir? I'm not sure I  
16 understand the question.

17 Q. If you do not submit this voluntary tax return, isn't  
18 it a fact they can come out at some point and even seize  
19 your rubber ducky?

20 A. Well, I think it's a little bit -- it's a little more  
21 difficult than that. If you don't voluntarily comply,  
22 you're subject to the penalties and the rules of the -- and  
23 the laws of the Internal Revenue Code as far as the payment  
24 and the compliance of the tax laws.

25 Q. So it's not voluntary, is it?

Hess - Cross

1 A. No, it is not.

2 Q. Then why is the term voluntary used by the IRS?

3 A. The term voluntary is a term voluntary compliance  
4 where people voluntarily go and which 99 percent of the  
5 people do and file their returns with the Internal Revenue  
6 Service as required under the Internal Revenue Code. The  
7 actual payment obviously -- the actual payment of tax and  
8 the actual filing of the return is a requirement under the  
9 Internal Revenue Code and the Internal Revenue Code  
10 statute. It's certainly not voluntary in the sense that  
11 any individual can go and sign whatever he wants to or does  
12 not have to file an income tax return.

13 Everyone is required by law of meeting the  
14 requirements of filing an income tax return.

15 Q. Thank you.

16 Isn't it a fact that in the past the Internal Revenue  
17 Service had been used for political purposes, sir?

18 MR. SMITH: Objection.

19 THE COURT: Sustained.

20 Q. How many times have you come to Cleveland to testify  
21 as an expert in a criminal case?

22 A. This is the first time, sir.

23 Q. Did the prosecutors ever ask you to look into any  
24 other Cleveland defendant?

25 A. No, he did not.



Hess - Cross

1 Q. Even in your Philadelphia office?

2 A. Yes.

3 Q. They didn't?

4 A. Could you repeat the question?

5 Q. Did they ever ask you and send you an item from  
6 Cleveland concerning one of their defendants for you to  
7 look at in Philadelphia?

8 A. No, they did not.

9 Q. So only time you've ever been in Cleveland was with  
10 the Jim Traficant case, is that your testimony?

11 A. That's correct, sir.

12 Q. Did you ask the IRS agents if they performed audits  
13 on the years you were to summarize?

14 A. They performed investigations for the years that were  
15 at issue, which involves examination of everything on the  
16 filed income tax return.

17 Q. Mr. Hess, when the IRS does an investigation, do they  
18 not do an audit? Yes or no.

19 A. They do an audit of the tax return per se, yes.

20 Q. Do you know if -- have any knowledge if they did an  
21 IRS audit on any of the witnesses in the Traficant case?

22 A. I have no knowledge of that.

23 Q. Did you recommend it?

24 A. No, I did not.

25 Q. Did you meet with Agent Perkins?

Hess - Cross

- 1 A. Yes, I did.
- 2 Q. How many different IRS agents have you met with since  
3 you've been in Cleveland?
- 4 A. Two.
- 5 Q. What are their names?
- 6 A. Chuck -- Agent Chuck Perkins and Agent Don Samansky.
- 7 Q. How many FBI agents have you met with since you have  
8 been in Cleveland?
- 9 A. I believe four.
- 10 Q. You remember their names?
- 11 A. Yeah, Rich -- yes.
- 12 Q. Pardon?
- 13 A. Yes, Rich Denholm.
- 14 Q. Denholm. Who else?
- 15 A. Dan and Mike. I'm not sure of their last names.
- 16 Q. Who else?
- 17 A. And that's it, just -- I'm sorry. There were just  
18 three.
- 19 Q. So it was Perkins and Samansky?
- 20 A. Yes.
- 21 Q. Did you meet with any judges when you were in  
22 Cleveland?
- 23 A. No, I did not.
- 24 Q. Did you look at the Traficant civil tax fraud  
25 transcript of the early -- in the late '80s?

Hess - Cross

- 1 A. I did not look at the transcript, no.
- 2 Q. Were they given to you?
- 3 A. The transcript was not given to me, no.
- 4 Q. Were any individual items of the civil tax trial of
- 5 Jim Traficant ever given to you, any parts?
- 6 A. Just the decision, the tax court decision.
- 7 Q. Who gave you that decision?
- 8 A. Attorney Bernie Smith.
- 9 Q. Is he in the room?
- 10 A. Yes, he is.
- 11 Q. Did you use that in connection with your evaluation,
- 12 and did it have an impression or make an impression upon
- 13 you in your summary report that you've given to this jury?
- 14 A. No, it did not.
- 15 Q. Was the burden of proof on the taxpayer at that time
- 16 in the mid'80s?
- 17 A. Could you repeat that, sir?
- 18 Q. Was the burden of proof on the taxpayer to prove
- 19 himself innocent in the mid '80s?
- 20 A. The burden of proof was on the -- was on the taxpayer
- 21 as far as the -- it was on the Government, proof of the
- 22 fraud penalty, but the burden of proof was on the taxpayer
- 23 as far as the civil court proceeding.
- 24 Q. Mr. Hess, were you informed that the Defendant had
- 25 been acquitted of the criminal charges involving tax

Hess - Cross

1 violations in 1983?

2 A. Yes.

3 Q. So was it a civil trial or a criminal trial when the  
4 tax trial occurred in the '80s?

5 A. It was a civil trial.

6 Q. Who had the burden of proof?

7 A. The Government had the burden of proof as far as  
8 proving 6653(b), fraud penalty.

9 Q. Who had the burden of proof in all other matters?

10 A. The IRS had the burden of proof as far as only with  
11 the penalty and the burden of proof and all other matters  
12 also stayed with the IRS.

13 Q. And the burden of proof was not on me to show I was  
14 innocent, is that your statement?

15 A. That's true.

16 MR. TRAFICANT: I don't want to bother you  
17 guys, but I'll turn this on.

18 MR. MORFORD: Here.

19 THE COURT: Thank you.

20 Q. Now, you looked at the years 1998 and 1999?

21 A. Yes.

22 Q. Did the Government show you a document known as James  
23 Traficant cash deposits to personal accounts?

24 A. Yes.

25 Q. Do you have a pencil with you, sir?

Hess - Cross

1 A. I have a pen.

2 Q. Do you have paper?

3 A. No, I don't.

4 MR. TRAFICANT: Can I borrow a -- well, let  
5 me just for once be of service to the IRS, sir.

6 Q. I'm going to give you a pad.

7 Do you have a pen?

8 A. Yes, I do.

9 Q. Does it write?

10 A. It writes.

11 Q. Would you identify this?

12 A. It's an exhibit titled James A. Traficant cash  
13 deposits to personal accounts.

14 Q. Does it have an exhibit number on it?

15 A. 1-27.1.

16 Q. And whose exhibit is it?

17 A. It's a Government exhibit.

18 Q. Okay.

19 I'm going to put this on the screen and leave this  
20 pad with you. Okay?

21 As an IRS agent, do you not deal with figures? You  
22 deal with figures, sir?

23 A. Yes, sir.

24 Q. You see the lines there? Let's start with the first  
25 part.

Hess - Cross

1           What year are we talking about in your summary, sir?

2       A.     1998, 1999.

3       Q.     What dates, what years do those cover?

4       A.     1998, 1999.

5       Q.     How many dates are listed? Just count them.

6       A.     Twelve.

7       Q.     Write down 12.

8           Now, from looking at this document, watch it as we go  
9       straight across. Do we not go to the same point, or you  
10      want me to take the whole document down and reduce it for  
11      you? Would you say that's the same point, sir?

12      A.     Yes.

13      Q.     Well, then, let's blow that up. How about that?

14      Would you count how many deposits, just by number, not the  
15      amount, total amount? Can you see the document? Can you  
16      see -- can you see this? Are you counting each one?

17      A.     Yes.

18      Q.     How many are there?

19      A.     There's 12.

20      Q.     Does the 12 here comport with the 12 that you have  
21      just testified to? Are those the 12 dates?

22      A.     No, these are --

23      Q.     These are dollars?

24      A.     No, these are -- that's an entirely different item.

25      One doesn't really relate to the other.

Hess - Cross

1 Q. Would you look at it again? And can you tell if that  
2 is 12 dates and 12 deposits?

3 A. Yes, it is.

4 Q. You couldn't tell that from the first time?

5 A. I believe I told you that the first time.

6 Q. You just told me you couldn't. It didn't relate.

7 Let's get to the point. I'm going to put it back on  
8 the board.

9 Now, you have a pencil, pen, whatever the IRS gives  
10 you, I want you to add up yourself the total deposits of  
11 1998 and 1999 made by Congressman Traficant in cash.

12 A. It's \$11,700.

13 Q. You have \$11,700? 23, 28, 48, 58, 65, 75, 85,  
14 10,000, 11, 11,700, right?

15 A. Right.

16 Q. Divide that by 12.

17 A. It's a little over 900 something dollars a month if  
18 this is what you're trying to draw. You want the exact  
19 figure?

20 Q. I want the exact figure of 12 months, 12 months  
21 divided into that amount.

22 THE COURT: Divided into what amount,  
23 Congressman?

24 MR. TRAFICANT: The total of this amount,  
25 11,700. 12 into 11,700.

Hess - Redirect/Smith

1 THE WITNESS: It's a little over \$908.88.

2 Q. Did you inquire -- did you inquire of the IRS agents  
3 if they did a cash analysis of Traficant's income?

4 A. No. The only thing that was shown was the -- was  
5 just used an analysis of the cash, and it was really done,  
6 I think, as a covering measure to determine whether cash  
7 was, in fact, being deposited. It wasn't used as a method  
8 of proof to determine unreported income or additional  
9 income.

10 Q. Is that an exorbitant amount of cash being deposited  
11 into a congressman's account?

12 MR. SMITH: Objection. Calls for conclusion.

13 THE COURT: Sustained.

14 BY MR. TRAFICANT:

15 Q. Did you meet with any other associates or individuals  
16 that had any relationship with me in regard to this case,  
17 Mr. Hess?

18 A. No, I did not.

19 MR. TRAFICANT: Thank you. No further  
20 questions at this time.

21 THE COURT: Thank you.

22 REDIRECT EXAMINATION OF BRUCE HESS

23 BY MR. SMITH:

24 Q. Mr. Hess, you were asked on cross-examination whether  
25 you looked at the 1993 through 1997 inclusive return; is



Hess - Redirect/Smith

1       that correct?

2       A.     That's correct.

3       Q.     Now, the Congressman is only charged with tax  
4       offenses for years 1998 and 1999; is that correct?

5       A.     That's correct.

6       Q.     Did you personally have any decision-making authority  
7       over which tax years were charged?

8       A.     No, I did not.

9       Q.     Did you look at the 1993 through 1997 returns to  
10      determine whether they could affect your calculation on the  
11      1998 and 1999 years?

12      A.     Yes, I did.

13      Q.     Did that require you to audit the 1993 through 1997  
14      returns to perform that function?

15      A.     Yes.

16      Q.     Did you perform an actual civil audit on the 1993  
17      through 1997 returns?

18      A.     No, I did not.

19      Q.     Did you -- were you required to actually verify the  
20      accuracy of the 1993 through 1997 returns?

21      A.     No.

22      Q.     Now, during your cross-examination, you were asked by  
23      Congressman Traficant whether you had examined a particular  
24      document. Do you recall that question and answer, whether  
25      you had examined a document. You said no, I looked at it.

Hess - Redirect/Smith

1       You remember that series of questions and answers?

2       A.     Yes, sir.

3       Q.     All right.

4             Now, in your field, does the word exam or examination  
5       have a technical meaning from a tax standpoint?

6       A.     Yes, it does.

7       Q.     All right. And did you answer the question in a  
8       technical sense rather than in a layman sense when you  
9       answered that question?

10      A.     Yes, I did.

11      Q.     All right. Would you please explain to the jury in  
12      the technical sense what examine or examination means in  
13      the civil tax context.

14      A.     Civil tax context means examining each and every item  
15      on the return to take a look at the documentary evidence  
16      backing up each particular item, and that's really what an  
17      examination is. You're examining the line item on a  
18      particular return in order to determine whether, in fact,  
19      it's the backup or the support of that particular item is  
20      there.

21      Q.     So when you looked at the 1993 through 1997 tax  
22      return to Congressman Traficant, did you perform an  
23      examination in the technical sense of that term?

24      A.     No, I did not.

25      Q.     Now, you were asked by Congressman Traficant on

Hess - Redirect/Smith

1 cross-examination whether a cash review over the last ten  
2 years had been done. Do you recall a question like that  
3 from the Congressman Traficant?

4 A. Yes.

5 Q. And in what type of case would a ten-year cash review  
6 typically be done?

7 A. It's two different types. Usually, the cash  
8 review -- if you're talking about cash expenditures --  
9 here again, we're going into technical terms. Cash  
10 expenditure would be a method of proof used to determine  
11 additional income, unreported income of a taxpayer, using  
12 the expenditures that are made; could also mean bank  
13 deposit type where we're using deposits to --

14 Q. Stop there a minute. Would you explain to the jury  
15 what the cash expenditures method of proof is?

16 A. Yes. Cash expenditure method of proof is where you  
17 use expenditures of a nondeductible expenditure of a  
18 particular taxpayer for either personal expenditures or  
19 capital expenditures on buying a house, and you equate that  
20 with what's reported on the tax return and come up with a  
21 correct taxable income in order to determine additional  
22 taxable income.

23 It differs from specific items method. You're not  
24 talking about specific items that are absolutely minimal in  
25 the tax return. You're using expenditures made by the

Hess - Redirect/Smith

1 taxpayer.

2 Q. Did you use a cash expenditures method of proof in  
3 this case?

4 A. No.

5 Q. What method did you use?

6 A. Specific items method.

7 Q. Did that require you to do a ten-year cash review?

8 A. No, it does not.

9 Q. All right. What was the other method you started to  
10 refer to with cash review?

11 A. Bank deposits.

12 Q. All right. Explain to the jury what a bank deposit  
13 method of proof is.

14 A. Bank deposits method of proof is where you add up  
15 most of the taxpayers' transactions run through his bank  
16 account, and you use deposits gone from a taxpayer's bank  
17 accounts in order to arrive at a corrected gross receipts  
18 or additional gross receipts figure.

19 Q. All right.

20 Did you use the bank deposits method of proof in this  
21 case?

22 A. No, we did not.

23 Q. Now, Congressman Traficant asked you on  
24 cross-examination whether or not you had looked at a  
25 Mr. James Sabatine's tax returns; is that right?

Hess - Redirect/Smith

1 A. That's correct.

2 Q. And he also asked you on cross-examination whether  
3 your review of the Sabatine transcript reflected that  
4 Mr. Sabatine had been convicted; is that right?

5 A. That's correct.

6 Q. Did your review of the transcript reveal that  
7 Mr. Sabatine pled guilty to a tax offense as part of his  
8 plea agreement?

9 A. Yes.

10 Q. Now, you were also asked by the Congressman on  
11 cross-examination about what you had done with respect to  
12 the boat expenses. You recall that series of questions and  
13 answers?

14 A. Yes.

15 Q. All right. Now, in this case and in this trial, what  
16 was your role with respect to Government's Exhibit  
17 8-62(2) -- excuse me -- 8-36(1), (2) and (3)? What was  
18 your role?

19 A. To summarize the evidence that was contained therein.

20 Q. All right.

21 Were you assigned by anyone to do any independent  
22 criminal investigative duties with respect to that exhibit,  
23 8-36, and its subparts?

24 A. No, I was not.

25 Q. Are you a criminal tax investigator at all?

Hess - Redirect/Smith

1 A. No, I am not.

2 Q. Is your testimony in this case about the boat  
3 expenses limited to a summary of the other evidence that's  
4 already been produced in this courtroom?

5 A. Yes.

6 Q. Now, the Congressman asked you whether or not there  
7 was some sort of indicator on the 1993 and 1996 tax returns  
8 that they were -- they were somehow part of a criminal  
9 investigation. You recall that series of questions and  
10 answers?

11 A. Yes, I do.

12 Q. All right. Does that flag on those two returns tell  
13 you anything about when that criminal investigation  
14 commenced?

15 A. No, it does not.

16 Q. You were asked some questions by the Congressman on  
17 cross-examination about his farm as being a hobby. You  
18 recall that series of questions and answers?

19 A. Yes. Yes, I do.

20 Q. And would you please explain to the jury in a little  
21 bit more detail what a hobby loss issue is?

22 A. A hobby loss is where a taxpayer's activity relating  
23 to a particular activity results in a loss, and therefore,  
24 because it does, even though you have income that's  
25 generated by that activity, because it has a loss and

## Hess - Recross

1       because of the transactions that are not for profit but  
2       just for purposes of being a hobby, you cannot claim a net  
3       loss from that activity.

4       Q.     Did any part of your calculation of unreported income  
5       in this case, was that affected in any way by a hobby loss  
6       issue in 1998?

7       A.     No, it was not.

8       Q.     How about 1999?

9       A.     No, it was not.

10               MR. SMITH: May I have a moment, your Honor?

11               THE COURT: Yes.

12               MR. SMITH: No further questions.

13               THE COURT: Thank you.

14               RE CROSS-EXAMINATION OF BRUCE HESS

15       BY MR. TRAFICANT:

16       Q.     You only did '98 and '99, what they just asked you,  
17       correct?

18       A.     That's correct.

19       Q.     You only looked at '93 and '97 to more or less  
20       understand the dynamics and get some refreshments relative  
21       to past activities, right?

22       A.     That's correct.

23       Q.     They asked you about the civil audit of the '93 and  
24       '97 returns.

25       A.     Would you repeat the question, sir?

Hess - Recross

1 Q. They mentioned a civil audit.

2 THE COURT: You need a question.

3 Q. On the 1993 and '97 matters.

4 THE COURT: Congressman, that's not a  
5 question; that's a statement. Would you please frame a  
6 question?

7 BY MR. TRAFICANT:

8 Q. Were you not asked the question about civil tax  
9 matters between '93 and '97?

10 A. Yes, I was.

11 Q. Did they not ask you questions about a technical exam  
12 and the difference between them?

13 A. Yes.

14 Q. Is this a civil case?

15 A. No, it is not.

16 Q. Are you a criminal investigator?

17 A. No, I am not.

18 Q. Why didn't they send a criminal investigator who  
19 could summarize this case, Mr. Hess?

20 MR. SMITH: Objection. Speculation

21 BY MR. TRAFICANT:

22 Q. Isn't it a fact that you really don't know what's  
23 happening --

24 THE COURT: Whoa, whoa, whoa, wait a minute.

25 Okay? There's no way he can really testify about what



Hess - Recross

1       somebody else did or why. Ask him questions he can testify  
2       to.

3       BY MR. TRAFICANT:

4       Q.     Isn't it a fact you, not being a criminal  
5       investigator, were brought here for your experience only to  
6       do paperwork in summary?

7       A.     To summarize the evidence and tax returns, yes.

8       Q.     Do you have criminal investigators that do summary  
9       work in Philadelphia?

10      A.     No, they're criminal investigators. Their job is to  
11      do criminal investigations. It's -- it involves mainly  
12      looking at items on a tax return, verifying it and taking  
13      evidence relating to unreported income.

14      Q.     Now, if the Cafaro, Sabatine, Sinclair, and Lange  
15      monies that you added to that joint tax return were not, in  
16      fact, brought forward, would that tax return submitted by  
17      the Traficant family be an honest statement?

18      A.     Could you repeat that question again, sir?

19      Q.     You've made a summary, in fact, on testimony, haven't  
20      you?

21      A.     Yes.

22      Q.     Supported by checks and drafts, right?

23      A.     Correct.

24      Q.     And you did no criminal investigation into whether or  
25      not there was any corroboration and substantial proof, did



Hess - Recross

1       you?

2       A.       No.

3                       MR. SMITH:  Objection.

4                       THE COURT:  Well, he can testify to that.  He  
5       has done that several times, but go ahead.

6                       MR. TRAFICANT:  No, he did not.

7       Q.       So let's talk about Al Lange.  You put his money on  
8       and added it up, didn't you?

9       A.       Yes, I did.

10      Q.       And you put Sinclair's money on, and you added it up,  
11      didn't you?

12      A.       Yes, I did.

13      Q.       And you put Sabatine's money on and added it up,  
14      didn't you?

15      A.       Yes, I did.

16      Q.       And you put Cafaro's money on and added it up, didn't  
17      you?

18      A.       Yes, I did.

19      Q.       You know if there's one shred of physical evidence to  
20      corroborates the truthfulness of this, other than the  
21      testimony?

22      A.       My summary is just based on the testimony and the  
23      evidence backing up that testimony that's been brought  
24      before the Court.

25      Q.       How do you know Mr. Lange spent that money on the

## Hess - Recross

1 boat?

2 A. Only by virtue of the invoices that -- and the bills  
3 that were submitted --

4 Q. Who submitted the invoices

5 A. -- submitted invoices for work that was done on the  
6 boat.

7 Q. Did you check with any IRS investigative agent in  
8 Cleveland if they performed that service?

9 A. No, I didn't.

10 Q. Did you suggest to them to do that?

11 A. No. That's not my job.

12 Q. Now, if you remove this, noncorroborated by physical  
13 evidence money, would the '98 and '99 returns of  
14 Congressman Traficant and his wife be reliable?

15 MR. SMITH: Objection to the characterization  
16 of uncorroborated.

17 THE COURT: That objection is sustained.  
18 Without that, you can answer it.

19 Q. Without physical evidence --

20 MR. SMITH: Objection to that as  
21 counterfactual.

22 THE COURT: The objection is sustained in  
23 terms of your using the word physical evidence. Just  
24 rephrase the question, Congressman. There's a question  
25 there to be asked and answered

Hess - Recross

1 BY MR. TRAFICANT:

2 Q. Isn't it a fact that you used paper, words, testimony  
3 to arrive at this income?

4 A. Yes.

5 Q. And isn't every one of this bit of testimony  
6 supported by invoices, checks, and other items provided by  
7 these subjects?

8 A. Yes.

9 Q. Did you look at a case involving a Mr. Bucheit?

10 A. No, I did not.

11 Q. You're under oath. I'm going ask you again. Were  
12 you asked to summarize a case for Mr. Pete Bucheit, Bucheit  
13 International?

14 A. No, I was not.

15 Q. Were you asked to look into a case of a Mr. Henry  
16 Nemenz?

17 MR. SMITH: Objection on relevance on Nemenz.

18 THE COURT: Well, you can answer the  
19 question. Were you or weren't you?

20 THE WITNESS: I'm not sure what you mean by  
21 the case.

22 Q. Did you ever hear the name Henry Nemenz?

23 A. Yes, I have.

24 Q. Did you look into that matter for the Prosecution?  
25 You're under oath here.

## Hess - Recross

1 A. I looked at evidence as that was submitted relating  
2 to documentary evidence relating to issues involving Henry  
3 Nemenz, yes.

4 Q. And not Pete Bucheit?

5 A. No. I did not look at anything related to Pete  
6 Bucheit.

7 Q. How about the Bucci brothers?

8 A. I'm sorry. Who?

9 Q. Bucci, B-U-C-C-I, as in BS?

10 A. No, I did not look at --

11 Q. But you did look at Nemenz?

12 A. Yes.

13 Q. Why is not Nemenz a part of your summary?

14 MR. SMITH: Objection.

15 THE COURT: Well, he can answer the question.

16 THE WITNESS: He didn't -- there wasn't any  
17 evidence related to Nemenz brought forth in this case. I  
18 couldn't include it on my summary.

19 Q. Now, you have yet to answer my question. If the  
20 allegations were not true regarding the four witnesses of  
21 which you summarized, would not the Traficant tax returns  
22 be honest and totally truthful?

23 A. The items on there -- the items on there would not be  
24 included as -- or picked up as additional income if the --  
25 if it was determined that the witnesses were either not

## Hess - Recross

1       telling the truth or the evidence submitted was not  
2       correct --

3       Q.     I didn't ask you that.  And I want you to listen.

4             If the allegations of Sabatine, Sinclair, Lange, and  
5       Cafaro were not true, would Traficant and his wife have  
6       submitted an honest, truthful tax return for '98 and '99?  
7       Yes or no.

8       A.     There would be no additional income for these  
9       proceedings.

10      Q.     What would that mean?  Yes or no.

11      A.     That means that there would be no additional income  
12      for these proceedings.  That doesn't mean that the returns  
13      themselves contained all the items that they should have  
14      contained.  There may be other items that weren't included  
15      in the summary for criminal purposes, which may affect your  
16      return.

17             I can't get up here and say that your return is  
18      accepted if these items weren't here, your return would be  
19      accepted as filed.

20      Q.     Well, do you think --

21      A.     I mean -- there may not be any criminal liability  
22      involved in it, but there may not be accepted as filed.

23      Q.     Is that why 60 to 70 percent of IRS calls are not  
24      returned to taxpayers because they spend so much time  
25      trying to explain a simple yes or no, Mr. Hess?

Hess - Recross

1 MR. SMITH: Objection, argumentative.

2 THE COURT: It is argumentative. Just go on  
3 to something else, Congressman.

4 Q. Now, you weren't asked to do a cash review for ten  
5 years, were you?

6 A. No, I was not.

7 Q. Are you familiar with a RICO case?

8 A. No, I am not.

9 Q. Is your basic experience in civil tax cases,  
10 Mr. Hess?

11 A. Civil and criminal.

12 Q. How much civil?

13 A. There was a reorganization that has just occurred  
14 that was primarily civil and some criminal, and now it's  
15 almost primarily working in the criminal tax area.

16 Q. When did the criminal tax area start?

17 A. I'm sorry. Could you repeat that, sir?

18 Q. You said you were involved in civil for all those  
19 years. When did all of a sudden they decide you are now a  
20 criminal expert?

21 A. We had a reorganization in the Year 2000, and  
22 apparently what happened is the IRS, based on the law that  
23 was passed, became functionalized; functionalized being it  
24 was divided up into different areas, large case areas,  
25 small business area, and a criminal tax area.



## Hess - Recross

1 Q. Isn't it a fact that you've been dealing with  
2 criminal cases since the Year 2000 basically on a regular  
3 basis?

4 A. Criminal, and also assisting in some civil  
5 proceedings, also.

6 Q. You still assist in civil as well?

7 A. Occasionally, very little now.

8 Q. And you mean to tell me the big office in  
9 Philadelphia sent down a man with one year's experience in  
10 criminal basic summaries, whose major experience was civil,  
11 and didn't decide to send down an expert in criminal  
12 investigative work and summary?

13 A. I didn't say that I did just civil before 2000,  
14 Congressman. I did probably an equal amount of criminal  
15 tax work and civil work. I did an awful lot of criminal  
16 tax work and testified in a number of criminal tax trials  
17 way before the Year 2000.

18 I'm also assisting in reviewing cases being  
19 recommended for criminal prosecution doing a technical  
20 review to those cases.

21 Q. Now that you're in the criminal division and you saw  
22 the tax returns, did you look at the account known as "farm  
23 activity"?

24 A. I looked at the schedule, not whether there was a  
25 schedule that was filed relating to farm activity.

## Hess - Recross

1 Q. And you didn't inquire why there was hardly nothing  
2 on the returns?

3 A. That wasn't part of the case to be considered,  
4 Congressman. So I wouldn't have looked at it, no.

5 Q. Well, isn't it a fact I'm being charged with  
6 activities concerning the farm? Did anybody inform you  
7 what this case was about?

8 MR. SMITH: Objection. It's not -- it's not  
9 part of Exhibit 6-3.

10 THE COURT: All right. There's a question at  
11 the end of this. You want him to answer the question, did  
12 anyone inform you about what the case was about?

13 Q. Did anyone inform you about the umbrella of this  
14 case?

15 A. Yes, they did.

16 Q. Did it involve work done at the Congressman's farm?

17 A. Yes.

18 Q. And you're telling me you didn't look at the farm  
19 section of the other report?

20 A. No. I did look at the farm section of the report,  
21 and one of the years, there was not a Schedule F filed.  
22 The work on the farm was not one of the items that was  
23 included in the summary attached to the proceedings of this  
24 case.

25 Q. Sir, did you suggest to them that they have a -- the

Hess - Recross

1 investigator that investigated Traficant come on the stand?

2 A. No, I did not.

3 Q. Can an IRS agent be subpoenaed, sir?

4 A. I can't answer that, sir.

5 Q. You have 33 years of experience, and you can't answer  
6 that question. Is that your answer?

7 A. Something about the subpoena in a court proceedings?

8 Q. No. I'm talking about subpoena for breakfast at  
9 McDonald's, Mr. Hess. Come on.

10 A. The procedures for subpoenaing an IRS agent are  
11 usually an agent that's not -- when he is subpoenaed,  
12 normally a subpoena does not have to be issued. It would  
13 be very rare a subpoena would have to be issued.

14 An IRS agent would normally be called to testify to  
15 that in that case.

16 Q. Isn't it a fact it's impossible to get federal agents  
17 on the stand? Yes or no.

18 A. No.

19 MR. SMITH: Objection.

20 Q. Isn't it a fact that all you did was look at numbers,  
21 and you don't know one thing about the source of those  
22 numbers, other than what you were given by someone who  
23 investigated it? Yes or no.

24 A. Yes.

25 Q. And with all your years of experience, did you say

Hess - Recross

1 hold it, fellows, what corroboration do you have of these  
2 allegations?

3 A. No. That's up to the attorney, the U.S. Attorney or  
4 the Assistant U.S. Attorney trying the case to determine  
5 what corroborative evidence he needs in the case.

6 Q. Isn't it a fact that an accountant down the street  
7 could have summarized for this jury what you just did?

8 A. If he has knowledge of the tax law.

9 Q. What knowledge of tax law did it take to look at bank  
10 checks, deposits, and testimony and write-up a summary,  
11 Mr. Hess?

12 A. Determine the year that it's taxed in, determine the  
13 value of the service that's being done for -- it's being --  
14 the value of the service that's given in exchange, the  
15 services rendered.

16 Q. Fine. How did you determine it?

17 A. I determined it according to the -- my interpretation  
18 of the Internal Revenue Code of the year to which it's to  
19 be and the amount that has to be picked up as income.

20 Q. And were you not given bank drafts, checks?

21 A. I was given the documentary evidence and the  
22 testimony that's been submitted before this Court to make  
23 my determination.

24 Q. Yes.

25 On the checks and the paperwork that you got -- I

Hess - Recross

1 want you to listen carefully -- could not an accountant,  
2 first year out of Ohio State University or Cleveland State,  
3 have provided the same summary you did? Yes or no.

4 A. No.

5 Q. What did you do that was so different?

6 A. Used my knowledge of the tax law, knowledge of the --  
7 looking at the documentary evidence, determining what was  
8 there, and the witnesses, testimony of the witnesses in the  
9 case.

10 Q. When we looked at the documents that were shown, all  
11 it showed was the dates, the dates of checks, who said they  
12 did this, who said they did what, and you added them up,  
13 didn't you?

14 A. Yes, sir.

15 Q. What else did you do?

16 A. I had to put them in the proper year that they  
17 belonged in for tax purposes.

18 Q. Are we in the rocket science here, Mr. Hess?

19 MR. SMITH: Objection. Argumentative.

20 Q. Come on now. Isn't it a fact they brought you in  
21 from Philadelphia because they didn't want to expose their  
22 investigators to this Defendant?

23 MR. SMITH: Objection.

24 THE COURT: If you have knowledge of any of  
25 this, you can answer. If you don't, you don't have to

Hess - Recross

1 answer.

2 THE WITNESS: No, I don't.

3 Q. Now, the Prosecution was asking you that just because  
4 there's some criminal investigation listed in 1993 doesn't  
5 necessarily mean that you were involved in a criminal  
6 investigation in '93, right?

7 A. That I personally was not involved?

8 Q. Yes.

9 A. I have no knowledge of any criminal investigation  
10 late into the year 1993.

11 Q. Did I show you the '93 tax return?

12 A. Yes.

13 Q. Did it say it was subject to criminal investigation?

14 A. Yes. I have no knowledge of that investigation,  
15 other than the fact that the document showed me that -- I  
16 don't know the state of the investigation, who was  
17 investigating it, the time that it was -- actually the  
18 investigation started --

19 Q. Mr. Hess --

20 A. -- or still continuing.

21 Q. Did it say civil, or did it say criminal in 1993?

22 A. Criminal investigation.

23 Q. With all years of experience, what does that, in  
24 fact, make you conclude?

25 A. That there was an ongoing criminal investigation

## Hess - Recross

1 relating to the year 1993.

2 Q. And wasn't it a fact that from '93 to '99 there was  
3 one of those in each one?

4 A. Yes, sir.

5 Q. Now, did you see '92?

6 A. No, I did not.

7 Q. You see '91?

8 A. No, I did not.

9 Q. Isn't it a fact there was a criminal investigation of  
10 Jim Traficant the day he walked out of that civil trial  
11 court?

12 A. No. I have no knowledge of that.

13 Q. So you didn't do anything to count up the money that  
14 was supplied to you by the Government from their witnesses,  
15 correct?

16 A. No, that's not correct.

17 Q. What else did you do?

18 A. I summarized the testimony of individuals and  
19 documentary evidence that's been brought before and  
20 evidence before this Court.

21 Q. What was the documentary evidence?

22 A. Checks, bills relating to the boat, document --  
23 whatever was indicated on my chart as documentary evidence.

24 Q. So because --

25 A. For instance, Mr. Cafaro, we had checks that were

Hess - Recross

1 drawn, and we had for the -- what we actually had was the  
2 invoices relating to the boat, supported by the --  
3 supported by the testimony of the individuals involved.

4 Q. Now, Mr. Hess, if I bring the welder in on a dolly  
5 and show it's never been used, would that change your  
6 opinion?

7 A. No.

8 Q. Because you see facts are really not important. What  
9 was important is what was delivered to you.

10 MR. SMITH: Objection.

11 THE COURT: That's a statement, and you know  
12 it's a statement. If you have a question and you can turn  
13 something into a question -- please don't make a statement.  
14 It's very difficult for me and for the jury to have to  
15 constantly sift through your statements, which are not  
16 proper evidence.

17 Thank you. Ask him a question if you have a  
18 question, please.

19 BY MR. TRAFICANT:

20 Q. Isn't it a fact that what you had were the words of  
21 the witnesses and the documents that were given to you by  
22 the Government to summarize?

23 A. The witnesses and the documents submitted into  
24 evidence before this Court, yes.

25 Q. And you did not attempt to corroborate any of those



## Hess - Further Redirect

1 expenditures?

2 A. No, I didn't.

3 MR. TRAFICANT: No further questions,

4 Mr. Hess.

5 MR. SMITH: May I, your Honor?

6 THE COURT: Yes

7 FURTHER REDIRECT EXAMINATION OF BRUCE HESS

8 BY MR. SMITH:

9 Q. Was it your assigned job to dig up corroboration in  
10 this case?

11 A. Would you repeat the question, please?

12 Q. Was it your job to dig up corroboration in this case?

13 A. No, it was not.

14 Q. Sir, if a case jacket with a 1993 tax return in it is  
15 flagged criminal investigation, does that mean that the  
16 criminal investigation started in 1993?

17 A. No, it does not.

18 Q. If a case jacket with a tax return 1994 is flagged  
19 criminal investigation, does that mean that the  
20 investigation necessarily started in 1994?

21 A. No.

22 Q. If a case jacket for the 1995 tax return is flagged  
23 criminal investigation, does that mean the investigation  
24 started in 1995?

25 A. No, it does not.

## Hess - Further Recross

1 Q. How long does the IRS have after a tax return is  
2 filed to commence and initiate a criminal prosecution?

3 A. Any time before the statute of limitations, criminal  
4 statute of limitations that is still open, criminal statute  
5 is still open.

6 Q. How long?

7 A. Six years.

8 Q. So when a tax return is filed, the IRS can start a  
9 criminal investigation any time within six years  
10 thereafter; is that correct?

11 A. That's correct.

12 Q. If a criminal tax investigation were opened in any  
13 particular year, would the IRS generally order up prior  
14 years returns to look at in connection with that  
15 investigation?

16 A. Yes, they would.

17 Q. Is that in the ordinary course?

18 A. Yes.

19 Q. Was Congressman Traficant singled out in any way on  
20 that score in this case?

21 A. No, he was not.

22 MR. SMITH: No further questions.

23 FURTHER RECROSS-EXAMINATION OF BRUCE HESS

24 BY MR. TRAFICANT:

25 Q. Now, you've seen thousands of tax returns, haven't

## Hess - Further Recross

1       you?

2       A.     Yes, I have.

3       Q.     When you see a flag with criminal investigation on  
4       it, what does it tell you?

5       A.     Usually what it means is that the case, depending on  
6       when it got started, is part of a -- part of a criminal  
7       investigation. That's really done for service center  
8       purposes to avoid any civil proceedings going on while a  
9       case is still being jacketed as a criminal investigation  
10      case.

11      Q.     Why do they jacket it as a criminal investigation  
12      case?

13      A.     They must have pulled it to look at or start an  
14      investigation.

15      Q.     Then wouldn't they have pulled it in 1993?

16      A.     Yes. If 1993 was flagged because they were  
17      looking -- what they would do normally is look at any years  
18      they felt would be applicable to the investigation part of  
19      the investigation. They would be required to do that.

20      Q.     Now, you were a little bit not forward in coming  
21      forth on the statute of limitations.

22                   MR. SMITH: Objection.

23                   THE COURT: Congressman, it's the jury's job  
24      to do those kinds of characterizations. So ask -- just ask  
25      a question.

## Hess - Further Recross

1 BY MR. TRAFICANT:

2 Q. When you were first asked about the statute of  
3 limitations, you were quite vague, is that correct?

4 A. No. I don't think I was vague. You're talking about  
5 the criminal statute or the civil statute of limitations?

6 Q. Criminal statute.

7 A. I don't believe I was vague.

8 Q. How many years is it?

9 A. Six years from either the date the return was filed  
10 or the due date of the return.

11 Q. What years are you investigating?

12 A. I'm not investigating.

13 Q. What are you summarizing?

14 A. The years 1998 and 1999.

15 Q. Subtract 1993 from 1999. How many years is that?

16 A. Six years. The return was filed -- the statute for  
17 the year, assuming timely filed return for 1993, it expired  
18 April 15th in the Year 2000.

19 Q. Do you have any knowledge that the Traficant file was  
20 flagged earlier than '93?

21 A. No, I do not.

22 Q. Now, when you normally testify as a criminal summary  
23 expert, is it not a fact that FBI or IRS agents have, in  
24 fact, offered evidence to the jurors first?

25 A. No. If it's strictly a tax case, there may not be

## Hess - Further Recross

1       any FBI agents involved. Normally, in a tax case, the case  
2       agent normally would testify because evidence that he has  
3       obtained has to be introduced into evidence unless it can  
4       be introduced in another way.

5       Q.     Is this a tax case, Mr. Hess?

6       A.     Part of the case is a tax case, yes, sir.

7       Q.     Are you familiar with what the case is?

8       A.     Yes, sir.

9       Q.     Tell me what it is.

10      A.     It has to do with the money, the tax end of it.  
11      Technically, there's many different charges in the case,  
12      Congressman. The tax end has to do with unreported income  
13      received for services rendered.

14      Q.     To the best of your knowledge, has an IRS  
15      investigative agency come before this jury and corroborated  
16      any of this evidence?

17                   MR. SMITH: Objection.

18                   THE COURT: Sustained.

19      Q.     To the best of your knowledge, has an IRS agent who  
20      investigated this case testified before you?

21      A.     Before me?

22      Q.     Yeah.

23      A.     Not before me, no.

24      Q.     Do you have knowledge that an IRS agent will testify?

25                   MR. SMITH: Objection. Personal knowledge.

## Hess - Further Recross

1 THE COURT: Well, if he has personal  
2 knowledge, he can say so. Do you have any personal  
3 knowledge?

4 THE WITNESS: No. I do not have personal  
5 knowledge whether any other IRS agent will testify in this  
6 proceeding.

7 THE COURT: Thank you.

8 Q. How many times have you flown back and forth from  
9 Philadelphia to Cleveland?

10 A. About six or seven times.

11 Q. What was the longest duration of stay you stayed in  
12 Cleveland?

13 A. A week.

14 Q. And what was the average amount of time you spent in  
15 Cleveland when you flew into Cleveland?

16 A. I'm sorry. Could you repeat that, sir?

17 Q. What was the average length of days you spent in  
18 Cleveland when you flew into Cleveland?

19 A. I'm sorry. You have to repeat the question.

20 Q. What were the average amount of days you spent in  
21 Cleveland after having flown from Philadelphia to the City  
22 of Cleveland?

23 A. Five days.

24 Q. So you're here seven times. One was a seven-day  
25 visit, and the other six were five-day visits. So you

## Hess - Further Recross

1       spent 37 days in Cleveland, Ohio?

2       A.     No, it's not that many days.  Some of the -- it  
3       averaged out to maybe five days, I would say probably 20  
4       days in Cleveland.

5       Q.     Doesn't the IRS maintain records?

6       A.     I have my travel records, yes, sir.

7       Q.     Don't you have to submit a report?

8       A.     Yes, I do.

9       Q.     Did you submit those reports?

10      A.     I submit travel reports, yes, sir.

11      Q.     Are you not also on expense when you're in Cleveland?

12      A.     Yes.

13      Q.     Who pays for those expenses?

14      A.     The office of Chief Counsel of the IRS pays for those  
15      expenses.

16      Q.     Who pays for ultimately for your expenses, Mr. Hess?

17      A.     You want me to say the taxpayer?

18      Q.     Are you an IRS agent or not?

19      A.     Yes, I am.

20      Q.     Who pays your expenses?

21      A.     The Internal Revenue Service.

22      Q.     And where do they get their money from?

23      A.     Where do they get our money?  From Congress.

24      Q.     And where does Congress get their money from?

25      A.     From the taxpayers of the United States.

## Hess - Further Recross

1 Q. Why did it take you five minutes to answer that  
2 question?

3 MR. SMITH: Objection.

4 THE COURT: Sustained.

5 THE WITNESS: I didn't understand --

6 MR. SMITH: Objection.

7 THE COURT: It didn't take five minutes so  
8 the record is clear. We've had a lot of gaps of time in  
9 this case.

10 BY MR. TRAFICANT:

11 Q. Mr. Hess, isn't it a fact you don't know a damn thing  
12 about this case other than what they gave you?

13 A. Other than what's been introduced into evidence,  
14 that's true.

15 MR. TRAFICANT: No further questions.

16 MR. SMITH: No questions.

17 THE COURT: Thank you, sir.

18 MR. TRAFICANT: Do I have a right to recall  
19 this witness?

20 THE COURT: Well, this is -- if you want to  
21 bring witnesses in in your own part of the case, you have  
22 to decide what you want to do but not in this part of the  
23 case.

24 MR. TRAFICANT: On defense, do I have a right  
25 to recall this witness?



1 THE COURT: Congressman, let's talk about all  
2 of that after the jury is gone for the day.

3 MR. TRAFICANT: Okay.

4 THE COURT: Various opportunities.

5 MR. TRAFICANT: Thank you, your Honor.

6 MR. SMITH: Your Honor, procedural matter  
7 which we need to discuss with you.

8 THE COURT: I guess you're going to have your  
9 afternoon break. It's not a bad time. All right.

10 (Proceedings in the absence of the jury:)

11 THE COURT: Mr. Smith.

12 MR. SMITH: Yes, your Honor. After -- at  
13 this point, the Government has called its last witness in  
14 its case-in-chief. After offering the last six exhibits  
15 during our case-in-chief from the witness Hess and allowing  
16 the Court to make the finding, it would be our intention  
17 after that to rest, and therefore, that's why we ask to  
18 speak to you procedurally how you wanted to handle it.

19 THE COURT: Okay. I heard you say making a  
20 finding, but I didn't hear there's a word you have before  
21 it.

22 MR. SMITH: Under United States versus Vinson  
23 and United States versus Enright, co-conspirator hearsay.

24 THE COURT: What I -- let me just look so I  
25 get the sequence here you're talking about. You're going

1 to offer six exhibits; is that right?

2 MR. SMITH: Yes, your Honor.

3 THE COURT: Okay. That's something we can do  
4 while the jury's --

5 MR. TRAFICANT: U.S. versus Vinson and U.S.  
6 versus --

7 THE COURT: Enright.

8 MR. TRAFICANT: Enright? I have a motion,  
9 too, your Honor.

10 THE COURT: Okay. Just a minute.

11 THE COURT: None of this requires the jury so  
12 it seems to me we ought to let the jury go home.

13 MR. SMITH: Correct.

14 THE COURT: It's late in the day. No reason  
15 to keep them down here while we do all this.

16 MR. SMITH: Basically, your Honor, we agree.

17 THE COURT: Okay. So that's part of the  
18 procedure is that I will -- once I get the smokers back,  
19 dismiss the jury for the balance of the day. Congressman.

20 MR. TRAFICANT: Your Honor, can I relieve my  
21 witnesses, or you want me to wait until we're all done  
22 here?

23 THE COURT: No. I don't think we'll get to  
24 your witnesses today. I think what we have to do is go  
25 forward with all the other things that we need to do that

1       the jury doesn't need to be present for. So hold on. I'm  
2       going to let you do it in just a second. Let's make sure  
3       we have everything covered here. My reporters could use a  
4       break, and so we're going to take a break anyway before we  
5       come back here. You can certainly release your witnesses.  
6       I don't know whether you want to rest in front of the jury  
7       or you want -- what you want to do. You can --

8                   MR. MORFORD: We can do that in the morning,  
9       your Honor.

10                  THE COURT: Okay. So we'll start with the  
11       introduction of whatever exhibits are left, and then we'll  
12       move on through whatever else we have to do, and we also  
13       need to get ourselves clear about whether we need the jury  
14       back, and that depends on how much work we have. You have  
15       a motion?

16                  MR. TRAFICANT: I have a motion for  
17       acquittal.

18                  THE COURT: Right. And so we'll have to deal  
19       with that today, too. So I need a better handle on all of  
20       this. First, let's let you get your witnesses released and  
21       let the jurors have their smokes, and we'll take a ten or  
22       15 minute break. How about 15 minutes? We'll be back at  
23       3:00.

24                  MR. SMITH: Yes, your Honor.

25                       (Thereupon, a recess was taken.)



1 (Proceedings in the absence of the jury:)

2 THE COURT: Let's begin with exhibits,  
3 please.

4 MR. SMITH: Yes, your Honor. There are only  
5 6. I'll start with Government's Exhibit 6-1, which is the  
6 1998 personal income tax return of Congressman Traficant.

7 MR. TRAFICANT: Make it a joint exhibit.

8 THE COURT: Okay. That'll be a joint  
9 exhibit, and that will be a joint exhibit and will be  
10 admitted.

11 MR. SMITH: Exhibit 6-2 is the 1999 personal  
12 income tax return of Congressman Traficant. We offer that.

13 MR. TRAFICANT: That's 6-2?

14 MR. SMITH: Yes, sir.

15 MR. TRAFICANT: I ask that also be a joint  
16 exhibit.

17 THE COURT: That'll be a joint exhibit, and  
18 it will be admitted.

19 MR. SMITH: 6-3, which is the chart on the  
20 summary of the additional income calculation of the agent.

21 MR. TRAFICANT: I ask it be made a joint  
22 exhibit.

23 THE COURT: It will be a joint exhibit, and  
24 it will be admitted without objection.

25 MR. SMITH: Exhibit 8-62(1), which is the

1       1006 summary of all the Taverna and various restaurant  
2       receipts.

3                   MR. TRAFICANT: I ask it be made a joint  
4       exhibit.

5                   THE COURT: That will be a joint exhibit, and  
6       it's admitted without objection.

7                   MR. SMITH: Exhibit 8-67(1), which is the  
8       chart summary of the boat expenses.

9                   MR. TRAFICANT: I ask it be made a joint  
10      exhibit.

11                  THE COURT: That'll be a joint exhibit, and  
12      it will be admitted without objection.

13                  MR. SMITH: Finally, your Honor, 8-67(2), the  
14      summary chart of the reimbursements to Lange concerning  
15      boat expenses.

16                  THE COURT: That'll be a joint exhibit, and  
17      it'll be -- oh.

18                  MR. TRAFICANT: Are you now -- are you now --

19                  THE COURT: No.

20                  MR. TRAFICANT: -- handling my case?

21                  THE COURT: No. I wouldn't want to do that,  
22      Congressman.

23                  MR. TRAFICANT: No. I didn't mean to demean  
24      you, your Honor. I make those mistakes, too. I want it to  
25      be a joint exhibit, but it's a summary of Lange's --

1                   MR. SMITH: Reimbursements on the boat  
2                   expenses.

3                   MR. TRAFICANT: I ask that be a joint  
4                   exhibit, your Honor.

5                   THE COURT: It will be admitted without  
6                   objection as a joint exhibit.

7                   MR. SMITH: That's it for exhibits from the  
8                   Government, your Honor.

9                   THE COURT: Okay. Congressman.

10                  MR. TRAFICANT: Your Honor, I have noticed  
11                  that you have ruled on a motion to quash Mr. Detore's  
12                  motion to quash, that you have denied it.

13                  THE COURT: I denied Mr. Detore's motion to  
14                  quash. I don't know whether the Government's seen that or  
15                  not. Have you?

16                  MR. MORFORD: Yes, we have, your Honor.

17                  THE COURT: Okay.

18                  MR. TRAFICANT: I would like to know how we  
19                  are to proceed since I have subpoenaed Mr. Detore.

20                  THE COURT: Well, what it -- they asked me  
21                  not to force him to come in response to your subpoena. And  
22                  I said no, I wouldn't do that. He needs to appear. And so  
23                  he will appear, and if when he gets here, he wishes to  
24                  assert his Fifth Amendment rights, then he'll do it just as  
25                  we've been doing it all along in this case, which he'll be

1       sworn, and he'll take the stand, all of this out of the  
2       hearing of the jury.

3               And he'll be asked a series of questions, and  
4       those -- the way he responds to those questions will  
5       determine whether or not he's met the standards of the  
6       Sixth Circuit in terms of asserting his Fifth Amendment  
7       rights, and once he's done that, if he does, then we'll  
8       take it from there. But there is -- does that explain the  
9       procedure? I mean, I -- it's another person.

10              MR. TRAFICANT: I know the procedure.

11              THE COURT: All right.

12              MR. TRAFICANT: My question is, Mr. Detore is  
13       not a co-conspirator in all of the counts alleged in the  
14       indictment. He is only involved in certain parts of that  
15       indictment.

16              THE COURT: Okay.

17              MR. TRAFICANT: And I think there should be a  
18       limited explanation as to what he would be subject to if he  
19       did take the stand before, in fact, he would decide to  
20       either invoke or take the stand.

21              THE COURT: I think -- I'm sure he's  
22       represented by counsel, and if he comes, I assume he'll  
23       come with his lawyer, and then we can deal with it then.  
24       We need him to come at your part of the case, which we  
25       haven't quite gotten to yet, and so that's another



1       important thing.

2               And that is that we can't deal with him now because  
3       we haven't really finished dealing with all of the issues  
4       in the Government's case. But, once we've done that, which  
5       I hope we will soon accomplish, then whenever there is a  
6       response by him with his lawyer, we will, out of the  
7       hearing of the jury, be dealing with this inquiry.

8               MR. TRAFICANT: I have one last question. If  
9       you would have gone ahead and quashed the subpoena, would  
10      it not be a fact that that would have to be made a part of  
11      the record of the case in front of the jury?

12              THE COURT: First of all, I would -- I would  
13      not be following Sixth Circuit law if I did it just based  
14      on the lawyers' representations. So I wouldn't have done  
15      that. So it doesn't get us very far to talk about if I  
16      had.

17              I think the -- I think I put enough in that order so  
18      you can see where the Sixth Circuit stands on that issue of  
19      someone asserting their Fifth Amendment right. Okay.

20              This is a good thing to be raising that because we're  
21      at an odd time in this case right now, and it's -- it's  
22      important that we all get clear about how to go forward.  
23      Some of the issues still before us in the Government's part  
24      of the case are going to take some time, and it's getting  
25      late in the day, and I think what's probably going to

1       happen here for one thing is that we should do some of that  
2       work beginning tomorrow morning rather than trying to get  
3       it done tonight because who knows how long it will take,  
4       and then there is the issue following whatever happens with  
5       this special inquiry, that they've asked that we make under  
6       these two cases, the Enright, Vinson inquiry, which I want  
7       you to have time to get acquainted with the principle of  
8       before you're put in a position to show whatever they're  
9       showing, and I think you need some time on that. So that's  
10      one thing they have to do.

11             And finally, when we finish all that, we're in a  
12      position to have whatever motion work is going to be done.  
13      You said you have a motion to make. The Government has to  
14      respond to it. So we have work ahead of us that's going to  
15      get us beyond today.

16             I'm in a position to simply leave the jury until we  
17      need them again, and that's what I'm going to try to figure  
18      out how much time I need to do. But, it is 3:15 already.  
19      So I suggest that we proceed this way, and you see how you  
20      feel about this. I think it really would be useful if we  
21      had a little colloquy. I'm assuming this is a  
22      co-conspirator inquiry hearing that I have to listen to,  
23      but I'm not sure that the Congressman has experience with  
24      those principles. And I would rather have us at least give  
25      him adequate time to do that, and more than just calling it

1       an Enright/Vinson hearing; we need to give him the cases  
2       and cites so he can do the work he needs to do to prepare  
3       for it.

4               MR. TRAFICANT: I would ask that be suspended  
5       until tomorrow morning.

6               MR. MORFORD: That's fine.

7               THE COURT: I think that's a really good  
8       idea, but I'd rather tell you today, at least, the full  
9       cites to the case, which we can either tell you or they can  
10      tell you.

11              MR. SMITH: I can tell --

12              THE COURT: Okay. So you can look at those  
13      cases, and see what it is that they're going to be  
14      attempting to establish here. I'm not sure it's going to  
15      be a very long hearing. It isn't normally, but it is one  
16      of these out-of-the-hearing-of-the-jury hearings, and so we  
17      ought to do it without bringing the jurors in necessarily.

18              MR. TRAFICANT: Can I ask one last question?

19              THE COURT: Sure.

20              MR. TRAFICANT: Why didn't we rise and have  
21      the motion for acquittal, then take that matter up so I  
22      could determine when my witnesses would have to be here  
23      tomorrow?

24              THE COURT: Well, we have to finish  
25      everything in the Government's case. We've done the

1 evidence part of it, and before they actually rest in the  
2 case, we have to have everything completed in their -- in  
3 their case, and this is one area that isn't complete yet.  
4 So that's one of the reasons.

5 But this also gives you time to continue, if you want  
6 to, to prepare what you know is coming eventually, your  
7 motion.

8 MR. TRAFICANT: In that regard then, without  
9 interfering, when would be an appropriate time for me to  
10 schedule witnesses --

11 THE COURT: That's what I'm trying to work  
12 toward here. Let me listen to the Government for a motion  
13 on the citations, and you write them down.

14 MR. SMITH: I'll give them first. Vinson,  
15 606 F. 2d 149.

16 MR. TRAFICANT: Wait a minute.

17 MR. SMITH: 606 F. 2d 149. Enright is  
18 579 F. 2d 980.

19 MR. TRAFICANT: 9?

20 MR. MORFORD: 980.

21 MR. TRAFICANT: 547 F. 2d 980, that was U.S.  
22 versus Enright?

23 MR. SMITH: Yes.

24 MR. TRAFICANT: And what do these cases deal  
25 with? Are they equal cases?

1                   MR. SMITH: Deal with the co-conspirator  
2 exception to the hearsay rule, and you're right, your  
3 Honor, I don't anticipate this taking up a long time.

4                   THE COURT: It doesn't take a long time, but  
5 I think he needs some time to look at it before we get into  
6 it.

7                   Yes?

8                   MR. MORFORD: Your Honor, I was going to note  
9 actually both issues the Court has talked about needing to  
10 address tomorrow. The first issue, which Mr. Smith just  
11 gave the case cites for, and also the second issue, which  
12 is Congressman Traficant's motion for acquittal, will  
13 really involve pretty much the same discussion in terms of  
14 most of these are conspiracy charges and would go to the --  
15 so we may be able to combine discussion or cite issue as to  
16 defense put first.

17                  MR. TRAFICANT: I'd like to respond to that.

18                  THE COURT: Okay.

19                  MR. TRAFICANT: Mr. Detore has no knowledge  
20 of nearly all of this case, except for one part of it. And  
21 he's a co-conspirator in but one aspect.

22                  THE COURT: Um-hum.

23                  MR. TRAFICANT: And all these other charges  
24 are unrelated. And I think there has to be some  
25 separation, and there has to be some delineation relative

1 to whether or not they can make a -- an important decision,  
2 whether or not they will or will not take the stand.

3 Now, I have subpoenaed Richard Detore. The  
4 Government has not. In that regard, I think that there  
5 should be some limited use of immunity relative to his  
6 testimony that you have granted to others under similar  
7 circumstances.

8 And that should be considered by the Court, and I  
9 talked with the attorney last night. I didn't raise the  
10 matter. I talked to him about the subpoena. He told me he  
11 had a motion. I haven't talked to him since you have, in  
12 fact, denied his quashing of the motion. I plan to contact  
13 him. I want to know if his witness is going to appear.

14 From what I understand, he is talking with his client  
15 as to whether or not he's going to make himself available,  
16 and if he makes himself available, then I will  
17 cross-examine -- we will examine him.

18 THE COURT: Okay. Well, if he were to make  
19 himself available, it certainly wouldn't occur before  
20 tomorrow morning. I mean, tomorrow morning is probably  
21 going to be taken up with this other work that we have  
22 before they close their case. So it may be that he'll get  
23 on in the afternoon if you put him on as your first  
24 witness.

25 MR. TRAFICANT: I would not even if he were

1 to be my witness, I would not put him on as my first  
2 witness.

3 THE COURT: Okay. Well, then, I can't see  
4 us -- I can't see us getting to him very easily tomorrow.

5 MR. TRAFICANT: No.

6 THE COURT: So maybe he'll be in on Friday,  
7 and Friday afternoon maybe we can do something, I don't  
8 know, but I -- but if you're asking me to do what only the  
9 Government can actually do here, I can't do it.

10 MR. TRAFICANT: No. What I'm asking, your  
11 Honor, is I would like to ask that rather than me have my  
12 witnesses drive all the way up here two days and sit, that  
13 we commence with the Traficant defense after the noon break  
14 tomorrow.

15 THE COURT: I think we can -- I think we  
16 probably could do that. I think we'd be ready to do it.  
17 I'm not sure though -- and a little of that depends on how  
18 things go in the morning -- if you're able to get -- both  
19 sides are able to get everything done, I think it's likely  
20 that at 1:30 we can start with your case.

21 And maybe, you know, maybe we should just say we'll  
22 tell the jury to be here and ready to go at 1:30.

23 MR. MORFORD: That'll be fine.

24 MR. TRAFICANT: That'll be fine with me.

25 THE COURT: And that gives us the morning to

1 work.

2 MR. MORFORD: We have no objection to that,  
3 your Honor.

4 MR. TRAFICANT: Now, your Honor, does that  
5 suggest that I have to have a written answer to their  
6 motion?

7 THE COURT: No. This is -- this is going to  
8 be a -- one of the sessions that we hold out of the hearing  
9 of the jury in order to determine whether or not they can  
10 show what they need to show in order to take advantage of  
11 one of the Rules of Evidence. It's no different than the  
12 other things we've done. Okay.

13 So what I'll do is arrange for the jury to report  
14 back here in time to work at 1:30 tomorrow, and we'll work  
15 in the morning. We'll start at 9:00.

16 MR. TRAFICANT: Thank you.

17 THE COURT: Okay. Anything further?

18 MR. SMITH: No, your Honor.

19 THE COURT: Okay.

20 MR. TRAFICANT: I have a motion that was  
21 delivered today, and I'm sure you haven't had time for the  
22 Government to respond, but I did give it to them in a  
23 timely fashion. I filed one with the Court, and I gave one  
24 to Edward, I believe, this morning, to give to the Judge.

25 And it deals with the -- my response to Government



1 motion for a special verdict form concerning Count 10.

2 THE COURT: Okay.

3 MR. TRAFICANT: And I would like to know when  
4 and if, in fact, that would inhibit the beginning of a  
5 defense. It should not.

6 THE COURT: No. What we'll do is try to get  
7 the jury instructions honed down enough so that before  
8 anyone does their -- their final preparation of things,  
9 everybody here is aware of what the jury instructions are  
10 going to be. We have three sections of a four-section jury  
11 instruction I think pretty much complete, and it may be  
12 that we can hand those out pretty soon for you guys to  
13 start looking at.

14 But we have to hear the evidence in the case first,  
15 and I'm not -- we aren't at that point yet. We don't know  
16 exactly what else is going to come up. So for one section  
17 of it, we can't complete the jury instructions yet.  
18 Verdict forms come along with that. In other words,  
19 they're the last piece we put together before we --

20 MR. TRAFICANT: The Defense --

21 THE COURT: -- have everything ready.

22 MR. TRAFICANT: Before the Defense closes?

23 THE COURT: Well, it is at least before I  
24 give -- read the instructions to the jury, which normally  
25 it is done. You close, and then we deal with instructions

1 to the jury. Then you do closing arguments. They do, you  
2 do, they do, and then I do the final instructions on how  
3 they deliberate to the jury, and then they go off and  
4 deliberate.

5 So before I do the written instructions that I also  
6 read to the jury, I want the verdict forms to be finalized.  
7 And so we've already begun working to do that, but I  
8 haven't addressed the one you're talking about yet, that  
9 they send a special form in, and I'm glad you have this.  
10 And we will consider what your concerns are at the same  
11 time that we're working at it.

12 MR. TRAFICANT: I have a question of the  
13 Court.

14 THE COURT: Yes?

15 MR. TRAFICANT: Under the Prosecution's  
16 motion on Count 10, I am, in fact, facing 21 counts. If,  
17 in fact --

18 THE COURT: Did you write about that in your  
19 motion? I haven't had a chance --

20 MR. TRAFICANT: I have a motion.

21 THE COURT: I know.

22 MR. TRAFICANT: And it's --

23 THE COURT: Let me make a point.

24 MR. TRAFICANT: I want to make a point  
25 though. I want to ask this point.

1 THE COURT: All right.

2 MR. TRAFICANT: If only two of the ten counts  
3 or two of the 11 acts listed in Count 10 are unanimously  
4 agreed upon and nine are not agreed upon, it is their  
5 motion that Count 10 must be a guilty verdict.

6 Now, that is subjecting this Defendant to not now ten  
7 counts, but I have specifically 21 individual trials at  
8 stake. I want to put that on the record now before my  
9 motion and their response is considered.

10 THE COURT: Okay. That's good. Okay. And  
11 here's one other -- this is just one other possibility.  
12 Let me lay this out for you since this is the first day of  
13 spring. Okay. We've been together for many weeks. It  
14 might be a better use of our time and a better use of the  
15 jury's time if we spent tomorrow afternoon tying up the  
16 segments of the jury instructions that are -- that we can  
17 make available to you by then and working on whatever other  
18 issues there are and just bring the jury in for their usual  
19 Friday half day instead of bringing them in for two half  
20 days in a row.

21 We can use tomorrow as a working day and try to get  
22 everything organized at this point in the trial. It is  
23 really up to you. I am sure that the jurors could use a  
24 break, and we probably could use a break. This may be the  
25 natural time to take it.

1 MR. TRAFICANT: Your Honor --

2 THE COURT: Yes.

3 MR. TRAFICANT: I'd like to suggest that not  
4 only to endorse yours but also to relieve Friday, give us  
5 all a break -- a break --

6 THE COURT: This is a real spring  
7 celebration.

8 MR. TRAFICANT: -- finish our break and start  
9 with the Defense on Monday when there's no doubt that my  
10 witnesses will be here and know they are going to be  
11 examined, and they're not going to be driving back and  
12 forth.

13 THE COURT: Well, we would have to work  
14 tomorrow until we get our work done so that this part of  
15 the case is closed down, and your motion work is done on  
16 their case. We would have to get that done.

17 And I think we should probably spend a little time on  
18 the jury instructions just so that we aren't left with that  
19 at the end of the case, but I'm not sure -- I mean, I think  
20 we can do that and justify letting the jurors have that day  
21 off. I don't know about Friday. That's a different  
22 proposal. It's a half day for someone to drive two hours  
23 each way. Maybe it's a good idea, I don't know.

24 MR. TRAFICANT: It turned out to be a longer  
25 prosecution section than we thought. We thought it would

1       be a two-month trial, and they have basically gone -- what?  
2       -- seven weeks?

3               THE COURT:  They're in the seventh week, I  
4       think.

5               MR. SMITH:  Well, after jury selection, we're  
6       in the sixth week, yes.

7               THE COURT:  Okay.  Well, it all counts really  
8       because they've had to be there all that time.

9               MR. TRAFICANT:  It's a long trial.

10              THE COURT:  Yeah.  We'll give them a spring  
11       break.  What do you think?

12              MR. MORFORD:  My one concern in taking what  
13       would be basically a five-day break, four-and-a-half-day  
14       break at this point is that we need to be careful with  
15       pre-trial publicity, an issue like mid-trial publicity and  
16       issues like that over a long period of time.  And part of  
17       that is incumbent upon the parties, if we're going to take  
18       this little break, to make sure we're not doing things to  
19       make it harder for them to do their job, which is to avoid  
20       publicity over what would be a four-day break.

21              THE COURT:  Maybe we can agree on that.

22              MR. TRAFICANT:  Your Honor, I'd like to just  
23       respond to Mr. Morford.

24              I have turned down 90 percent of requests.  I have  
25       done only those that I had made commitments to make, and I

1       have tried to stay focused with the case.

2               Now, I think these jurors -- we may have work to do  
3       Friday ourselves. I'm not so sure we're going to finish  
4       our work tomorrow.

5               THE COURT: I'm not either.

6               MR. TRAFICANT: And I think these jurors  
7       coming in here might come in here at 9:00 and we might tie  
8       them up until 10:30 anyway, so I'm not saying we shouldn't  
9       work. We get our work done Thursday --

10              THE COURT: I think the suggestion is could  
11       we all -- everybody refrain from doing any of the kind of  
12       press stuff that is -- that is going to make it hard for  
13       them to get through four days without being exposed somehow  
14       to stuff that they aren't supposed to pay attention to.

15              MR. TRAFICANT: Your Honor, I'm scheduled to  
16       be on the O'Reilly Factor tonight, and I'm going to be on  
17       the O'Reilly Factor tonight.

18              THE COURT: I don't even know what that is.

19              MR. TRAFICANT: It's a national cable show,  
20       but I have tried to in generalities discuss and tried to  
21       avoid as much as possible the case, tried to talk about  
22       other matters, although Mr. Morford doesn't agree to that,  
23       but I really have. But, I have a commitment for the  
24       O'Reilly Factor show, and it is tonight, and I will do it.

25              MR. MORFORD: That's my concern about taking

1 a four-day break in the middle of the trial when the  
2 Defendant's going on national TV and talking about the  
3 trial. I think it's not a good thing.

4 MR. TRAFICANT: I am trying not to talk about  
5 the trial, and I have turned down Good Morning America,  
6 Today.

7 THE COURT: Right.

8 MR. TRAFICANT: But, I have this commitment.  
9 It was made, and I'm going to be asked about charges, I'm  
10 sure, and I'm going to respond. And I will try to be as  
11 generic as I possibly can. Certainly, I'm not going to  
12 help the Government make their case, that's for damn sure  
13 here.

14 THE COURT: Well, the Government hasn't been  
15 out --

16 MR. TRAFICANT: That's their job.

17 THE COURT: -- doing the press at all. So  
18 okay.

19 Well, then, we'll go back to 1:30 tomorrow. I just  
20 want you to understand that the jury has been working hard  
21 to keep themselves away from any kind of press exposure,  
22 and you can tell they've been working hard at it. It is  
23 not an easy thing to do. It's not easy for any of us to --

24 MR. TRAFICANT: Your Honor --

25 THE COURT: -- stay back from it. So keep

1 thinking about it.

2 MR. TRAFICANT: I would like the break.

3 THE COURT: I'm sorry, but I can't do it if  
4 they're going to have to be --

5 MR. TRAFICANT: No. What I'm saying --

6 THE COURT: Better they're in here with me  
7 explaining to me that they're able to keep their oath than  
8 having them exposed to undue publicity.

9 MR. TRAFICANT: Let me explain what I'm  
10 saying.

11 THE COURT: You have a lot of choices,  
12 Congressman, about what you do.

13 MR. TRAFICANT: We work Thursday and Friday,  
14 there may not be a need for the jury to work Thursday or  
15 Friday.

16 THE COURT: We'll be able to avoid that. You  
17 and I can work from 4:30 to 6:00 on Thursday and Friday,  
18 and we'll be able to avoid that and not use the jurors'  
19 time, but it's simply a -- you reach a point in the case  
20 where the publicity is a real problem for jurors, and I  
21 don't want to subject them to that.

22 MR. TRAFICANT: Well, when -- when will the  
23 jurors be in tomorrow, and when will --

24 THE COURT: 1:30.

25 MR. TRAFICANT: And Friday as well?



1 THE COURT: They'll be here in the morning on  
2 Friday like they always do.

3 MR. TRAFICANT: Okay. When can I be expected  
4 to have my witnesses on the stand?

5 THE COURT: I guess tomorrow at 1:30 looks  
6 like it. Okay? So we'll get through it in the morning.  
7 See you at 9:00. We'll do our work between 9:00 and 12:00.

8 MR. TRAFICANT: Thank you, your Honor.

9 MR. SMITH: Good night, your Honor.

10 (Proceedings adjourned.)

11 CROSS-EXAMINATION OF JOHN J. CAFARO CONTINUED..... 4227

12 DIRECT EXAMINATION OF BRUCE HESS..... 4246

13 VOIR DIRE EXAMINATION OF BRUCE HESS.....4263

14 RESUMED DIRECT EXAMINATION OF BRUCE HESS.....4285

15 CROSS-EXAMINATION OF BRUCE HESS..... 4292

16 REDIRECT EXAMINATION OF BRUCE HESS..... 4341

17 RECROSS-EXAMINATION OF BRUCE HESS..... 4348

18 FURTHER REDIRECT EXAMINATION OF BRUCE HESS ..... 4365

19 FURTHER RECROSS-EXAMINATION OF BRUCE HESS ..... 4366

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct  
22 transcript from the record of proceedings in the  
above-entitled matter.

23 

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